No. 8069

In the United States Circuit Court of Appeals

For the Ninth Circuit.

FOSTER AND KLEISER COMPANY, a corporation,
Appellant,

vs.

SPECIAL SITE SIGN COMPANY, a corporation,
Appellee.

Transcript of Record.

VOLUME 4

Pages 1841 to 2496, Inclusive.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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(Testimony of Charles H. King)

Witness continuing: Among the 30 office record cards I said I had examined, there is only one that I still have, that is the Hirsch location on Alvarado Highway south of Main Street, Irving. All the others I no longer have.

CROSS EXAMINATION

BY MR. CLARK:

I can't recall the size of our plant at the time we started in business in December, 1916. I would have to look at the records for that. My statement that we had constructed a total of approximately 2,000 panels in the period of time we have been in business is my opinion only, it is not a statement of fact.

MR. CLARK: I move, if the court please, to strike out all the witness's direct testimony relating to the number of structures that he erected during the period he was in business, on the ground he now states it is merely an opinion.

THE COURT: While he says it is an opinion, he really means an estimate, doesn't he? In other words, you had charge of this business?

A Yes, sir.

THE COURT: And you did the work, through your employees, and that is your best estimate of the number of signs that you constructed?

A Yes, sir.

(Testimony of Charles H. King)

THE COURT: It is not the expression of an opinion as to whether or not he erected the signs, but an estimate of the number he erected. Motion to strike denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 187.

Witness continuing: The depression hit us in 1930. I could not say how many panels we had in our plant at the end of 1929. I can't recall that. I should think we had about 70 poster panels and about 150 painted bulletins. We went into the poster panel end of the business in 1927. Prior to that we had limited our business exclusively to paint which consisted of erecting and painting bulletins on highways. We were inside the city limits of the City of Oakland probably within half a mile of the heart of the city, at 14th and Washington. We went into the poster panel business because there was a system developed whereby we could produce posters in our plant and we did not depend upon the Donaldson Company or other lithograph companies for posters. It was always our ambition to get into the poster business. Prior to that time we have made a thorough investigation of the circumstances; Cordtz, La Fon and myself had talked it over in our conventions of independent plants. We made no attempts to get advertising posters anywhere or from anybody because we realized it was futile.

MR. CLARK: I move to strike the last part of the answer as being a conclusion of the witness, "because we realized it was futile."

THE COURT: Denied.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 188.

THE COURT: How did you know it was futile?

A We knew that Foster & Kleiser Company, through their combination, controlled the posters at the source, and we knew that we were not able to get Donaldson posters, and we were not able to get into the poster business until we were able to produce our own posters.

MR. STERRY: I want to move to strike the answer on the ground it is a pure conclusion of the witness.

THE COURT: Well, I am not going to handle the case for the plaintiff at all. The question was: What did you do? That is where we start from, what did you do to get this poster business?

MR. CLARK: Here is a man who says—

THE COURT: (Interrupting): Well, I know, but he should be—he should tell us what he did. He says in effect he did not make any effort because he knew there was no use. Now, you should say how you know. It will not do for you to say it was no use. What did you do?

A I called on advertisers in an effort to get their posting business.

THE COURT: Well, for instance, what?

A Well, for instance the Johnson Clothing Company in Oakland. He thought he could get—

MR. CLARK: (Interrupting) I object to what the Johnson Clothing Company thought.

A Well, we were unable to get posters.

Portion of testimony on this page stricken out on page 3605 of transcript.

MR. CLARK: This is a serious matter, if the Court please.

THE COURT: What was the net result of your effort?

MR. CLARK: If your Honor please, may I interpose a question before that one is answered?

THE COURT: Yes.

MR. CLARK: My question was, not what he did with the Johnson people, and I will clarify it in this way: Did the Johnson Clothing Company manufacture or sell outdoor advertising posters?

A No, sir.

MR. CLARK: I submit that the answer should be narrowly limited first, and then let him explain.

THE COURT: This now is an effort on his part to obtain some poster business. He was describing the result of an effort to obtain some poster business.

MR. CLARK: All right. Go ahead.

A I called on Johnson to get his poster business and he *though* he would be able to get the posters for us. And he wrote and found that he would not be able to get the posters, and so we did not get the business.

MR. CLARK: I object to all of that and move to strike it all out on the ground it is not responsive to any question at all. On the further ground it is the opinion and conclusion of the witness, and on the third ground it is not the best evidence.

(Testimony of Charles H. King)

THE COURT: Confine it to the scope that he called on Johnson to get posters and Johnson tried to get some, and what did you say, he could not get them?

A He was not able to get them.

MR. CLARK: There we are again.

MR. STERRY: And that, your Honor, "that he tried to get them" is hearsay.

THE COURT: A ruling is made; go on.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 189.

MR. STERRY: May I specifically call your Honor's attention—

THE COURT: No, not now, Mr. Sterry. I sifted out the portion of the answer that I thought was not a conclusion.

MR. STERRY: There was a motion that your Honor has not ruled on.

THE COURT: I think the witness must be allowed to tell just what he did to obtain this business, and that being, I assume, the basis of his statement that he could not get the business. Go ahead and tell us just what you did.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 190.

A Mr. Johnson wanted to give us the business.

(Testimony of Charles H. King)

THE COURT: You have already told us that. I may be mistaken, not having very much knowledge of this business, but I supposed Johnson was one of the persons from whom he would get outdoor advertising business.

MR. CLARK: That is quite true.

THE COURT: And in that respect that would be knowledge testimony; isn't that right?

MR. CLARK: I will take your Honor's ruling on the matter.

THE COURT: In other words, he says he could not get outdoor advertising poster business. Now, we will say he called it poster business, that is his statement that he could not get that. Very well. That is a conclusion. He must tell us why he could not get it, what he did to get it. He says he went to a man named Johnson. Now, with my limited knowledge of the subject, I would suppose that Johnson is one of the persons who offered some of this posting business, or at least from which it came. Otherwise I don't see why he should go to Johnson, rather than to somebody else.

Witness continuing: Johnson was a clothing merchant in the City of Oakland handling the Kuppenheimer line. He dealt in his own posters. I guess he bought and sold his own posters. He paid the Kuppenheimer a certain part of the cost of the posters, as I understood it. He did not sell those posters. I said that he bought and sold posters a moment ago because he got the posters and placed them with the advertising company to be posted on plants. He placed them with Foster & Kleiser and not with me. That is not the reason I could not get

(Testimony of Charles H. King)

the posters to post on my plant. I made an effort to get posters from the Donaldson Company prior to the time I went into the poster business. I would have to refer to the records to get the exact time. My contract ledger sheets showing the Montgomery Ward business would show that because that was the first posting we did.

Examining this contract register, Plaintiff's Exhibit 121-A for identification, I find that we attempted to get posters from Donaldson in approximately August of 1927. We went into the poster business at approximately this time too. I have been endeavoring to get into the poster business for years and I had made a good many efforts to get posters. We secured this Montgomery Ward contract because we were able to produce our own posters at this time and we did produce them on this contract. That was the first attempt we made to get lithograph posters from Donaldson. We wrote letters to Donaldson. I will produce them as soon as I can get them. We never attempted to get lithograph posters from Foster & Kleiser nor did we inquire of them. I testified the other day that Foster & Kleiser were the agents of Donaldson for posters. That was common knowledge and that is the basis upon which I gave the testimony.

In 1916, to the best of my recollection, our plant covered territory from Bakersfield to Chico and Ukiah. They were all paint boards, mostly on highways.

When I first started in the outdoor advertising business in 1916 the staff of the Special Site Sign Company consisted of just myself and the bookkeeper. I can't recall what our actual paid in capital was. It was probably five or six thousand dollars. Our outstanding stock today is

(Testimony of Charles H. King)

about $7,200. It has never been any greater than that in the entire history of the company. It is possible that I am wrong about that. That is my opinion. The maximum amount of working capital that we have had in our possession in any one year has been about $10,000. It is not my opinion that upon the basis of the hypothetical question put to me by Mr. Glensor that the Special Site Sign Company could continue from 1919 indefinitely in the future to make a gross income each year 20 per cent greater than the year before. I suppose there would be a saturation point somewhere. I don't know where that would come. I didn't figure that far into the future. I merely figured up to the end of 1934. In my opinion as an expert in the outdoor advertising business, I see no reason why we should not continue to make the 25 per cent profit each year. I am not familiar with any other businesses but I know the sign business and I know that we could make 25 per cent. No business in which I have ever been interested has ever made a 25 per cent profit in a year. I have not been interested in any other business. I have not been close enough to other businesses to answer your question as to whether I know of any business, commercial or otherwise, which has made a 25 per cent profit a year since 1919. My reasons for saying that the Special Site Sign Company could do that are that I know what our costs in the business are and I know that if we had been allowed to complete our showings or half showings or quarter showings, or any kind of showings, we would have been able to get our schedule. On our schedule of prices, with our costs, we could have made 25 per cent in most instances and, in

(Testimony of Charles H. King)

others, more than 25 per cent. We have a schedule of costs and prices and have had a schedule each year since 1925. Our schedule for standard poster panels has been $32.50 for illuminated and $7.80 for dark panels. Very often we vary from that price, because we were selling odds and ends and we weren't able to get our schedule price. A full showing in our plant had always consisted of about 76 boards. My testimony is that we have never been in a position to sell a full quarter showing or a full half showing or a full three-quarters showing or a full showing of poster panels. That condition of inability has persisted throughout my entire time in the past with this advertising business and persists today. My contention is that because of the unfair practices of Foster & Kleiser Company we were prevented from getting together a full showing of anything in poster panels. Whatever we offered to an advertiser, it was not a quarter showing, a full showing or a half showing. It was a broken lot. I don't know as we told the advertiser about it or not.

Q. If it was a broken lot, of course you did not offer it to him as full showing or a full quarter?

A. The advertisers know what they are buying.

Witness continuing: Painted bulletins are not sold in full showings or half showings or quarter showings. Bulletins are sold in groups, but the make-up of a group of painted bulletins depends largely on the advertiser because every advertiser has a different idea. Painted bulletins are very rarely sold as individual units. They are selected by the advertiser or his representative in groups which are called "packages". We sell a poster panel

broken showing permitting the advertiser to select his posters. We have had to do that because we haven't been able to offer complete showings. We have always done that. We haven't been able to do anything else. We do not exactly permit the advertiser to go into our plant and select the poster panels upon which he wants his paper posted. In some instances, if he wanted to change the location of a poster and wanted to cover some other section, we allowed him to change the proposal originally made. When we first sold an advertiser we sold him a showing that we had been able to get together. As I recall, there were some changes made from time to time at the wish of the advertiser himself.

Q. How many quarter showings could you accommodate on your plant at one time—at the time of the greatest number of panels?

A. Well, we were never able, as I said, to deliver what you would call a quarter showing.

Witness continuing: My bookkeeper and myself made up the staff of the Special Site Sign Company for about a year. We then added a salesman. The bookkeeper did not do any selling. The salesman I employed about a year after I organized the corporation sold space to local, Pacific Coast and to national advertisers, or attempted to do so.

I couldn't say how long the three of us constituted the staff of the Special Site Sign Company. The maximum number of employees that we have had, including officials, was approximately 8 in the sales and leasing. Two of them were leasemen. At times we had more than two leasemen in our organization. At times we had a max-

(Testimony of Charles H. King)

imum of four leasemen. I don't recall what year that was. The maximum number of salesmen that we had at one time was three, as I recall. In an effort to sell our poster advertising space to national advertisers, we worked with all the agencies, the Bureau, we called on the advertisers direct where possible and corresponded with them in the East. I believe we began working with the Bureau in 1929. We limited our effort with the Bureau to the Bureau office in San Francisco. We solicited all the agencies in San Francisco, McCann-Erickson, Lord & Thomas, Bottsford Constantine, Irwin Waisy, and there are a number that I can't recall now. We had an eastern representative. I can't recall the date but I believe I could find the date by searching my records. We had a representative by the name of Mahin in New York and one by the name of Bender in Chicago. We did not have a representative on the Pacific Coast. We represented ourselves. Mr. Westbrook represented us and the other independents on the Pacific Coast. On one occasion I went East to interview advertisers and representatives of agencies. I don't recall the date but I went to Cleveland to call on the Champion Spark Plug account, Mr. DeWitte, vice-president.

Most of the national outdoor advertising business originates in the East. That business is handled through the agencies and from the agencies to the Bureau and from the Bureau to Foster & Kleiser. Your statement that the sales effort made by the plant owner must be made upon the agency or on the advertiser, or upon both, is substantially correct. We solicited from the merchants who handled the nationally advertised products but he is

rarely able to influence the manufacturer or jobber to place advertising matters in the local plant of his selection. The agency gets its information as regards the outdoor plants through the Bureau. Our plant sends its specifications to the Bureau, but as far as I have been able to learn all the information that goes to the agencies is private information and I don't know what report is made on my plant to the agency. I have never seen a publication of the National Outdoor Advertising Bureau in the form of a booklet setting forth a description of the various outdoor advertising plants in the United States. I have never been able to get hold of one of those.

I know what the function of the National Outdoor Advertising Bureau is. It is to check outdoor advertising plants and when agencies want information regarding the plants, it is furnished to them by the Bureau. It is information as regards the type of a plant and how much space they have open if an agency wants to place a contract. The Bureau furnishes information in regard to what showing can be given and what plant in the towns in which the agency is interested. In other words, the Bureau supplies information as to the capacity and the quality of service, etc., of outdoor advertising plants. It is my understanding that the Bureau in a good many instances designates what plant it is to go on. After the contract has been let it is their duty to check and inspect the plant to see whether or not the contract is performed properly. I never had the Bureau check my plant to see that. I never had a contract delivered to me by the Bureau. It is possible that my plant is not and never has been of sufficient posting capacity to attract national outdoor advertising.

(Testimony of Charles H. King)

I called attention to the fact that our plant was more individual than Foster & Kleiser's to the Bureau and still we got no recognition. I drew a comparison between my plant and Foster & Kleiser's plant. I think that is fair. It is probably not fair to call the national advertisers' attention to the fact that our goods are better than Foster & Kleiser's or any other competitors. We are not on main highways or main thoroughfares. We use spotted maps and send them to advertisers. I think it is a fair thing to spot up a map showing what we can offer an advertiser as compared with what a competitor can offer and explain it to the advertiser. There isn't anything wrong about it at all in my opinion.

Q There isn't anything wrong about it, in your opinion, in comparing the service that you can render, with the service that Foster & Kleiser Company can render, is there, if you are fair in your statements with respect to Foster & Kleiser?

A I made no such comparisons as that.

Q There is nothing wrong about it if you did, is there?

A In our proposals, we didn't compare our plant with Foster & Kleiser's plant.

Witness continuing: We have sent spotted maps to the advertisers and agencies and the Bureau. There might be something unfair in the comparison between a showing that we could offer an advertiser and a showing in the City of Oakland that could be offered by any of our competitors. I did not compare what our plant could offer an advertiser with what any other plant could offer. I offered it on its merits. I convinced them that the

merits of my plant outweighed the merits of any other plant just as a salesman does, by sales talk. Our salesmen do not compare their goods with the goods of competitors. They never have to my knowledge. It is against the policy of my company to permit them to do that. It never occurred to me that that might be the reason we did not get any national business. My company were members of a national advertising association formed in Cincinnati. I believe they called it the United Outdoor Advertising Association. It was an organization of the so-called independent advertising plants and, as near as I can remember, it was organized in about 1928 and went out of existence about a year after that. The purpose was to coordinate the sales efforts of the independents over the United States. As a secondary thought it considered standards of construction of the plants of its members.

We have maintained a construction crew and a painting crew throughout the existence of the company. At the present time we only have two landscapped painted bulletins in our plant, one at our plant and one at First Avenue and East 12th Street. I don't believe we have ever had more than three at one time, that was about 1931 and 1932. I can't recall when we had the first one, probably in 1927; when we built the one at First Avenue and East 12th Street. We maintain an inspection and service crew of one man, and have ever since about 1920. We have never had more than one man. His function is to inspect the boards and report what condition they are in, see whether the posts are in good order, if the sign is dangerous, and to inspect the lights and posting. He

(Testimony of Charles H. King)

is our construction foreman and makes periodic trips, in Oakland once a week and out on the higways about once every six months. He works from 8 in the morning until 5 in the evening. I made a mistake. One evening each week he checks the lights. Our salesman and myself also check lights. There are three regular inspections a week. I don't know on just what days. Monday the salesman checks them, and about the middle of the week I check them, and at the end of the week the construction foreman checks them. That check is made from dark on for whatever time it takes to make the route. I don't think it ever took until 3 o'clock in the morning. I have made the rounds. It took me two hours to check our illuminated plants. That is the only inspection service that we maintain. That is all that is necessary.

In deriving my formula in accordance with which I gave my estimate of the value of various locations, I took into consideration to what extent the property could be developed and what the monthly income would be and found the value of that particular site to the plant as a whole. I assumed that I was entitled to make and would make under normal conditions 25 per cent net profit on each and every location. I then assumed that each and every location had a certain value to the plant as a whole and to each and every other location, and to the firm as a going company. For that so-called plant value I allocated one-third of the net that I said I could make from that location. I assumed that a lease had an average life expectancy of six years. We multiplied the monthly income by 72 months and took one-fourth of it and then

(Testimony of Charles H. King)

added one-third of that one-fourth. I worked that formula out myself. I arrived at the one-third that I attributed to each location for its assumed value to the plant as a whole in this way: Each one of these bulletins carries our imprint at the top and a prospective advertiser, traveling the highway, sees a nice bulletin on a key location. That is repeated as he goes down the road and then it creates new business for the firm, the same as if an author puts out a book under his name and sells it at a certain price. That sales price is not the only value to the author. The book creates a demand for more of his work. And likewise an artist who paints a fine picture with his name on it. That creates a desire for more of his pictures and creates new business for the artist. That applies likewise to our key locations. Advertisers see those things and ring in and want to purchase a sign like this one or that one, and I have estimated that at least one-third of the new business that we obtain comes to us that way.

I did not make any distinction in the application of that formula between my unbuilt locations and my built ones, nor between key locations or any other locations. The locations in question were all key locations, each and every one of them. A key location is a location on a main thoroughfare with good visibility and where the purchasing power is high.

Referrring to my file, I valued the Hamlin location at $23,400. That was for six years in the future. I calculated a monthly income, gross, of $975. I multiplied that by 72, took one-fourth of it and then added to that one-third of one-fourth. I could not say what the actual

(Testimony of Charles H. King)

income was that I was receiving from that property at the time I claimed I lost it to Foster & Kleiser. I believe the books would show that. I did not look up the actual income in the books. I didn't have it in mind at all when I gave my testimony that the value of this location was $23,400.

The Hamlin Ranch was just opposite Holy Cross Station.

Mr. Clark thereupon reviewed with the witness various contracts for the Hamlin Ranch, as shown by the contract Register of Special Site Sign Company.

Witness continuing: The total amount that I actually received under those contracts was $1,290.25 over the period of time from January 15, 1919 to January 15, 1921, which averages $53.78 a month actual revenue that I received. It is still my view that the property was at that time, 1921, of a value of $23,400., because it had at that time a potential gross revenue, meaning capacity, of $23,400.

I testified that the loss of the Hamlin location almost put the Special Site Sign Company out of business. We had lots of telephone calls when we had our imprints on those boards at Holy Cross. It sold considerable other business. It was not especially profitable at that time, but it must be considered that these boards were old, dilapidated boards, and the site had not been developed.

To get the monthly gross income or value of $23,400., you would multiply by 3 and divide by 72. The monthly income would be $975. That $975. at 72 times would give you $70,200. I multiplied the $975 by 18 as a sort of a short-cut. Three times $23,400. would give the gross

(Testimony of Charles H. King)

income of that property. We took 25 per cent as our profit and then took one-third of that 25 per cent for the value of the plant. One-third of 25 per cent is 8-1/3, and added to 25 gives you 33-1/3 per cent, so in each instance, if you take the gross income and divide it by three, you get the value to the plant. You get $5,850.

I have made a 25 per cent net profit on a bulletin at 12th Street and Fallon in Oakland. We got $275 a month for that board from the Jackson Furniture Company in Oakland. I don't recall just how long we received that, the contract register will show it.

About the time my lease on the Hamlin property was expiring, I made an offer for it to Dr. Hamlin. It was somewheres around $4,000; I don't recall the exact amount that was for the whole ranch. I don't recall that it was $4,200 a year. I recall the general appearance of the Hamlin property in January, 1921. There were five, possibly six, advertising boards on there of various kinds. They were all ours. There was no other advertising there that did not belong to us. We were the only ones that had outdoor advertising on the Hamlin Ranch at that time, as far as I know.

I was down through there frequently when we had our boards up, every month or two months. I wouldn't say exactly that the Hamilton Ranch was a mass of outdoor advertising signs in the month of January, 1921, but the signs were a mess, and that it why we didn't get more money for them. It was our idea to develop and clean the site up. That is on the main highway between San Francisco and Los Angeles, near Burlingame, San Mateo

(Testimony of Charles H. King)

and San Francisco. I really couldn't answer your question as to whether the women's organizations and civic organizations were up in arms about the unsightly appearance of the boards on the Hamlin property at that time. There has always been agitation by women's clubs, not to any particular sites but all sites. We had plans to develop and clean up the site. We were kept so busy with Foster & Kleiser's interference that we hadn't got to it. We had not had our locations on there very long. I believe it was a year and some months.

In the billboard business, "sniping" means signs that are put up without permission of the owner.

Friday, January 4, 1935

Witness continuing: In the application of my formula on what I call value, I do not necessarily assume that we would have a billboard on the location. I do not assume necessarily that if we had a structure on it, that the structure would be sold to an advertiser throughout the entire six year period of the lease. The 72 months in my formula is a term of expectancy. We have estimated that without interference that would be our term of a leasehold and we would derive that revenue from that leasehold for the term of it. I am assuming that for a six year period we would derive revenue. I don't think my answer a moment ago was inaccurate. I assume that during that six year period the boards would be filled for the entire period without any cessation of advertising matter on them. I don't assume necessarily that we would have a structure on the property. I do not assume that we would sell the vacant lot to an ad-

vertiser. That whole theory is an average. We were working on the law of averages. We don't assume in our formula, first, that we would have a billboard on the lease, and secondly, that the billboard would be sold to an advertiser throughout the entire period of six years.

MR. CLARK: Then, if he does not assume it, I move to strike out all testimony given by this witness on direct examination with respect to the 72 months, because he says now that he makes no assumption, and consequently it appears plainly that the factor of 72 months has no relation to the matter.

THE COURT: I am not entirely clear on what the position of the witness is.

BY THE COURT:

I gave a figure that I say is the total revenue that I would derive from this site for a period of 72 months. You can't get revenue unless you have got a sign there, but this is an average period. We figure how the site could be developed. The figure I gave is on the assumption that it is a developed site, and a developed site means one filled to capacity with signs. You can't have signs unless you have structures. I don't assume that we have structures.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 191.

(Testimony of Charles H. King)

BY MR. CLARK:

I assume that the assumed structures would be sold for a period of 72 months in the application of my formula.

The contract register of the Special Site Sign Company shows a contract with Jackson Furniture Company dated January 8, 1932 to run 24 months from March, 1932, to March, 1934. The contract was cancelled, however, on the 13th month at a penalty.

This data concerning a contract in my contract register showing a contract dated October 22, 1925, to run 36 months from December 18, 1925, invoice to read "Option to cancel end of 12 months, $20 per month additional; end of 24 months, $15.00 per month additional; terms $275.00 per month.", is the painted bulletin about which I spoke yesterday in answer to a question of yours when I stated that I made a 25 per cent net profit on the bulletin at 12th Street and Fallon in Oakland. That contract was cancelled in the 13th month and it appears that we reduced the price on April 14, 1926 to $250, commencing December 18, 1926.

Q Did you make a profit of 25 per cent on $275 a month for a period of six years?

A No, but we made a profit of 25 per cent or better on the contract.

MR. CLARK: I move to strike the last part of the answer as not being responsive to the question, "made a profit on the contract."

THE COURT: Motion denied.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 192.

Witness continuing: After examining my file relating to the Swain location, I find that we lost the board on September 4, 1926. I made a memorandum of that location. (Witness produced memorandum.) As near as I recall this date of May 1, 1930, shown in the memorandum, is the date we sent our men up to the Swain location. That was the date the sign was lost. This memorandum which reads "Lessor John A. Swain, lease No. 2." is the one we are talking about.

"Location lower Sacramento Road two miles north of Stockton; terms of lease May 13, 1919 to May 13, 1925, six years; renewed May 13, 1925 for five years to May 13, 1930; amount of rental $15.00 per year; advertiser Brunswick Tire, later Star Brand Olive Oil, 10 by 50 feet; date lost May 1, 1930." The date lost "May 1, 1930", refers to the date on which I say we lost the location. We sent the men up there, probably after we had lost the location, and found the sign gone, and the men reported that. I believe this date here was the date they reported it on, May 1, 1930. I made that memorandum about six months ago. Mrs. Montgomery and I worked on the compilation of it from what records we could find.

(Testimony of Charles H. King)

This memorandum shows that the sign was taken down in 1930.

The notation on the bottom of Plaintiff's Exhibit 161-C is in my handwriting. It says, "Lost at expiration, May 1, 1930." I guess we lost the lease on May 1, 1930; that is what this notation says. My previous testimony that we lost the lease and the sign both at that time is correct. I also testified that our sign was taken down shortly before expiration. I have no recollection at all that our sign was taken down shortly before May 1, 1930; the only recollection I have is this notation here. I got the information that I put in that notation from an oral report of the men that was given when they arrived in the shop on May 2nd or 3rd, 1930. I made this memorandum within the last six months.

My books show that we painted the sign on that location, the Swain property, on May 1, 1930, but there must have been a mistake in writing it down or somthing, because I recall it very distinctly. It may have been 1931 that we lost it instead of 1930. I don't know. I can't say when we lost the lease. I am confused on it. I have nothing further to say. I don't know when we left the location.

According to the contract register, we received $14 a month for that bulletin on the Swain property. The value of that location at $14 a month gross revenue, in accordance with my formula, would be $336. I testified

(Testimony of Charles H. King)

that it was of a value of $553. That is at the rate of $23 a month. I don't believe we ever got $23 a month for that bulletin on which the Olive Oil sign was painted from any advertiser.

MR. CLARK: I move to strike out all the witness' testimony given on direct examination concerning the value of this location for the reason that it appears, first, that the witness does not know when he lost the location, consequently the presumption arises that Foster & Kleiser did not take the location until after he had lost it; secondly, that the evidence is that Foster & Kleiser did not disturb plaintiff's possession in any way at all, but that Mrs. Swain refused to renew the lease.

THE COURT: I will deny the motion at this time.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 193.

Witness continuing: This Banchero location is the location with respect to which I testified that we never gave Hughes a quitclaim. That is my signature on this document dated July 19, 1930. I must have had a mental lapse. I certainly don't recall when I gave him this quitclaim.

The document referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit YY in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Defendants' Exhibit No. YY.]

File with Lease No. 3082

July 19, 1930

Confirming our conversation, we have no further interest in the property which we formerly had under lease on Telegraph Avenue, WS, in the vicinity of 59th Street, owned by Mr. Banchero, and as far as we are concerned you may enter into an agreement with him if you desire.

Signed: SPECIAL SITE SIGN COMPANY

By: Charles H King Jr.
Mgr.

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. YY for ident (later in evid) Filed 1/4 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

THE WITNESS: I believe that that was after our sign was taken off, and after Foster & Kleiser had the lease.

MR. CLARK: I move to strike out the testimony of the statements of the witness on the ground they are not responsive.

THE COURT: Denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 194.

(Testimony of Charles H. King)

MR. CLARK: I now move to strike out all the witness' testimony with respect to the value of this Banchero site, on the ground that it now appears that he stated in writing a quitclaim of his right, title and interest to the Banchero location and said he had no further interest in it.

Witness continuing: We did not remove our sign at all, as I recall it.

MR. GLENSOR: The quitclaim is dated July 19, 1930, and Foster & Kleiser's record cards show that the sign was removed in 1930, but that he was ordered off way back in 1927.

THE COURT. I do not think the quitclaim is decisive of the question. Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 195.

Witness continuing: We secured the Segin property for a 24-sheet illuminated poster panel and had a 4 by 6 on it. We erected that on October 23, 1925, and as near as I can recollect, we lost it about three years after that. Our rental checks show payment of rent from 1925 to 1929, and as I recall, the Emanuel Furniture Company was the only advertising matter we had on that location. According to the contract register, the contract with the Emanuel Furniture Company calls for seventy 4 by 6 signs at $2 per unit per month. One of these signs was located on the Segin property. It is my testimony that Segin told me prior to November 10, 1928 that we

(Testimony of Charles H. King)

would have to get the sign down because if he had it down he would be getting $35 a year from the Foster & Kleiser Company. I believe that Foster & Kleiser's office record cards show that Foster & Kleiser Company paid him $6 a year. Nevertheless, that is what Segin said. I would like to explain that the tree was cut down about the same time that Segin called at our office in 1928.

As an expert in the outdoor advertising business, it is my opinion that the Segin property at the time we got it in 1925 was available for a 24-sheet illuminated poster panel.

This lease on the Twining location, Plaintiff's Exhibit 133-A, provided that the lessor might order the boards removed at any time by giving the lessee thirty days' notice in writing in case the lessor sold the premises. We had another lease on that property subsequently that did not contain that clause.

In my experience in the outdoor advertising business I have found it desirable for an outdoor advertising concern to offer a service stated-wide in scope *on* Pacific Coast-wide in scope. Stevens of Seattle, La Fon and Cordtz and myself at one time planned to associate ourselves together so that we could deliver a coast-wide service between us. We did not attempt to form a single company. We discussed the question whether it would be desirable to deliver that service under one name and finally decided not to do that.

We owned bulletins above Ukiah up as far as Seattle, north of Seattle and over to Spokane and down as far as Mexico. Over this territory we had Folger Coffee, Ghirardelli's Chocolate and Champion Spark Plug signs.

(Testimony of Charles H. King)

We owned bulletins in all those places. We just abandoned them after the expiration of our Champion Spark Plug contract in 1926. We acquired those bulletins and locations for the purpose of performing the Champion Spark Plug contract. We had several hundred of those bulletins all told. The bulletins were cut to represent a spark plug and were sent out here by the Champion Spark Plug Company. We didn't change the original painting but we kept them repainted. Since 1926 our business has been limited to the State of California.

It seems to me I had a discussion with Mr. George A. Hughes about selling my poster plant. Mr. Ashcraft, who was an association plant owner in Richmond, wanted me to give him a price to offer to Foster & Kleiser. I gave him a price of $100,000 and George Hughes told me that that was too much money for the business and asked me how I figured it was worth that much money. I told him that that was what I wanted for it, and that if they didn't want it, they didn't have to take it. That is all the conversation, as far as I recall. I don't remember when that occurred. I recall Mr. Hughes asking me concerning the report which was current that Mr. Stevens of the C. E. Stevens Company of Seattle had purchased a 51 per cent interest in our plant. Mr. Hughes asked me if he had bought into my plant. I stated that we had no connection with Stevens in any way and that Stevens had submitted various propositions to me, none of which were acceptable. That conversation possibly took place about March 5, 1931 in the office of Foster & Kleiser Company in Oakland. I never offered our posting plant to Mr. George Hughes, the Oakland Branch

(Testimony of Charles H. King)

Manager of Foster & Kleiser Company, nor did I ever take a list of our locations of poster panels in the cities of Oakland, Berkeley, San Leandro and El Cerrito and submit them to him. I believe I took a list over to Mr. Lausen at one time about 1931. I took that list over to interest Lausen in the purchase of our plant. I wanted to sell the whole plant at that time.

In my experience in the outdoor advertising business I have never maintained a public relations department. I have kept or attempted to keep track of ordinances or regulations of any kind that might be passed by the legislative bodies of the City of Oakland or the County of Alameda which might affect the business of outdoor advertising or of legislation that might be introduced in the State Legislature, but I have never maintained a separate department for that purpose.

It has been my experience that it was desirable for one engaged in the outdoor advertising business to keep the structures in good presentable condition at all times. If that is not done, in addition to the possible loss of customers, it creates unfavorable comment and is liable to cause agitation against the industry. The industry as a whole in California at all times since I have been in the business has had to do everything it possibly could do to keep itself in the good graces of the public to prevent adverse local and state legislation. I don't recall that one of the reasons for the adverse public opinion in 1927 and 1928 was the use by outdoor advertising companies of scenic spots on the public highways of this State. My impression is that the cause of that agitation has been mostly sniping. I define sniping to mean signs and pla-

cards and posters that are pasted and put on property without any agreement from the owner. I would also consider the pasting or tacking of a conglomerate mass of small signs on structures or groups of structures as sniping even if the one who did the tacking had the right to do it. As I know the meaning of the term, sniping consists in posters placed all over the sides of buildings and along fences, with or without the consent of the owner, if it is unsightly. We were a small unit in this industry and were pretty well occupied by Foster & Kleiser competition, and we did not feel we could afford to benefit the industry by spending money to lease property on which sniping existed for the sole purpose of eradicating the sniping. We never did that but we took care of our plant and we never did any sniping of our own. We let Foster & Kleiser carry that burden at their own expense. They represent 95 per cent of the industry and they should carry it.

Q BY MR. CLARK: Did you ever, the Special Site Sign Company ever go out and lease a piece of property upon which sniping existed, clean it up at your own expense, and paint a sign "Post no Bills" on that property, and not make any use of it for outdoor advertising?

A Yes, sir, we have.

Q At your own expense?

A Yes, sir.

Q And continued to pay rental on the property to protect it from being used for sniping?

A Well, it was parts of property that we had under lease.

(Testimony of Charles H. King)

Q. Did you use it for outdoor advertising purposes yourself?

A Yes.

Q That was not my question. At least, I did not intend to ask it that way. Did you ever clean up sniping property at your own expense and mark it "Post no Bills", and continue to hold it as secured unbuilt, paying rental on it?

A No, sir.

MR. GLENSOR: I object to the line of questioning as incompetent, irrelevant and immaterial. It is palpably an effort to lay a foundation for showing that Foster & Kleiser were great benefactors of this industry, which is entirely irrelevant and immaterial to the issues in this case.

THE COURT: The objection is sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 196.

Witness continuing: Special Site Sign Company never carried any unbuilt space and never bought space to hold. It might be that at times we leased a space and out of necessity had to hold it for a little while. When we lost a location, we put several leasemen out and endeavored to secure a space. If we could not secure it, we would eliminate that one from the contract. It was our practice to go out and get new space every time we lost a location. We were successful in almost every case. We did not attempt, as a practice, to carry any per cent of unbuilt

space. We couldn't afford to do that. I have no theory as to what the relation or ratio of unbuilt space to built space should be in an outdoor advertising business properly conducted in the territory in which we operate. I have never found it necessary to carry any unbuilt space. I have always gotten along without it. We have had to eliminate a location from our posting or painting contract because of the loss of that location, but that happened very rarely. I couldn't recall right now any that we have eliminated.

On this lease of Gonsalves location, Plaintiff's Exhibit 158-A, the date of the lease is smeared. According to the memorandum in my file, the term of the lease was for ten years from February 15, 1928 to February 15, 1938. I secured that location for a 24-sheet illuminated poster panel. We leased from Gonsalves; the frontage was about 30 feet or 25 feet. As I recall, the frontage of the property adjoining on the south upon which Foster & Kleiser's 6-sheet was situated was about 50 feet. The 25-foot lot is more desirable than a 50-foot lot for an advertising structure because it gives a more open showing to the poster if the 50-foot lot is unoccupied by a structure. I have never found it to be one of the risks of the business that when we leased a lot in the location of that 25-foot lot and built on it that we would find that some competitor has before that leased the lot next to it. I have never found that except with Foster & Kleiser. Any other competitor usually builds when he leases the property. When we leased the 25-foot strip we made an effort to lease that 50-foot property from someone that lived in a house on the rear. They told me they didn't

want to lease it. I don't know the name of the person who lived on the property. We made no attempt to ascertain whether the person who lived in the house on the 50-foot lot was the owner or not, but they said they didn't want any signs there. The name of the party on the 50-foot lot was Mrs. Ambrose. After we secured our lease on the 25-foot lot I went to her on two different occasions and tried to get her to cancel the Foster & Kleiser lease.

Q To get the lease, knowing that Foster & Kleiser Company had a 6-foot panel up there at the time?

A Knowing that they put it up to block our site, yes, sir.

MR. CLARK: May I have that answer go out and have a direct answer to my question, your honor? It is not responsive.

THE COURT: Well, it is responsive enough, I think, but it does not answer the question completely. It does not really answer the question that was asked.

Q You knew at the time that you made the offer that the sign was there, of course?

A Yes, sir.

Q That is why you made it?

A Yes, sir, that is why I made it.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 197.

(Testimony of Charles H. King)

Witness continuing: It is my view that Foster & Kleiser Company had no right to make use of that 50 foot lot after we had erected our painted bulletins on the 25 foot lot. Foster & Kleiser should have abandoned that location or should have shown possession in some way. I knew Foster & Kleiser were in the outdoor advertising business. If Foster & Kleiser had built a 10 by 50 painted bulletin there on the 50 foot lot after we had erected our 4 by 6s, I would have felt just the same way about it. It is my view that inasmuch as we were first to erect a 4 by 6 structure on the 25 foot lot that we had a right to a free view over the adjoining 50 foot lot.

Q Did you ever offer Foster & Kleiser Company the rent on that 50-foot lot, to give you a free view?

A I knew that that would be futile. I never offered it because I —

MR. CLARK: I move that so much of the answer as states "I knew that that would be futile," go out as not responsive.

THE COURT: No, motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 198.

THE COURT: The witness said he desired to make some explanation of his answer.

Witness continuing: I wanted to explain why I knew it would be futile. I had done such things before and I could never get any cooperation from Foster & Kleiser. We built a board on East 14th Street and 89th Avenue. Mr. Hughes complained continuously to the Building De-

partment about it not being built according to the ordinance. He often took it up with me and I told him that if he thought it was bad for the industry that I would gladly move the board at my own expense if he would give me a location out there, but he would not do that.

In my experience in the outdoor advertising business I have never heard anything about the construction of outdoor advertising structures on the inside curves of highways resulting in public agitation except from Foster & Kleiser agents. I drive an automobile myself. A 10 by 50 board on the inside curve of a highway obstructs the view going around the curve if it is a very sharp turn. If it is a sharp enough turn and the view is obstructed, the board constitutes a traffic hazard. I never heard that the construction of billboards on the inside curves of highways has resulted in public agitation against the billboard business except through Foster & Kleiser agents. That is the only way I have ever heard it. There is no law against constructing things of that kind. The so-called Gillig board was constructed on the inside curve of a highway. I never heard that the maintenance of that board resulted in agitation by the State Highway Commission that it should be taken down because it was a traffic hazard. It is not a fact as far as we are concerned. We owned the board for a year but I never heard anything of it. I do not know why Foster & Kleiser Company wanted to get rid of that board. We have a board at what is known as Death Curve on Foothill Boulevard. It is on the inside curve. It is a poster panel. There is about 500 feet unobstructed view there right straight down the road.

(Testimony of Charles H. King)

In this file marked Exhibit 133, the letters marked 133-I, 133-H, 133-G, 133-F, 133-E, 133-D and 133-C are the only letters we received from anyone with respect to the Twining-Milliken property. That is, it is everything we could find pertaining to these matters. I don't believe I told my counsel that we got $75 from the East Bay Title Insurance Company for a quitclaim deed of our right, title and interest in that Milliken property. In fact, I had forgotten it myself. I believe I received the original of this photostat of a letter which you hand me. I had forgotten that we did that. We also received the original of this photostatic copy of a check in favor of Special Site Sign Company for $75 and the Special Site Sign Company endorsed the original. I had forgotten it. That was after we had been knocked off, of course. I guess we executed a quitclaim deed in consideration of that $75 check. The reason I don't recall that is that the deal was all handled by Mrs. Montgomery. I recall that now. I would not doubt but what this certified copy of a quitclaim deed is a copy of the deed which we gave in consideration of that $75 check.

The photostatic copies of the letter and check and the certified copy of the quitclaim deed were thereupon received in evidence and marked Defendants' Exhibit DDD in evidence. Said Defendants' Exhibit DDD in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Defendants' Exhibit No. DDD.]

SPECIAL SITE SIGN CO., TO WM. P. MILLIKEN

QUITCLAIM DEED

THIS INDENTURE, made this 17th day of April, in the year of our Lord One thousand nine hundred and thirty. Between Special Site Sign Co., the party of the first part, and Wm. P. Milliken, the party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) in gold coin of the United States of America, to it in hand paid by the part_ of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever Quitclaim unto the said party of the second part and to his heirs and assigns forever, ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Oakland, County of Alameda, State of California, and bounded and particularly described as follows, to-wit:—

Beginning at a point on the northeasterly line of East 12th Street, formerly Washington Street and distant thereon southeasterly 100 feet from the intersection thereof with the Southeasterly line of 13th Avenue, formerly Walker Street, as said street and avenue are shown on the map hereinafter referred to; running thence southeasterly along said line of East 12th Street 75 feet; thence at a right angle northeasterly 200 feet; thence at a right angle northwesterly 75 feet; and thence at a right angle south westerly 200 feet to the point of beginning.

(Testimony of Charles H. King)

Being a portion of what was formerly the Town of Clinton as the same is delineated and designated upon Higley's Map of said Town, recorded in Liber "B" of Deeds at page 537 in the office of the County Recorder of Alameda County, California.

[Perforated]: C. R. A. C.

Excepting therefrom that portion sold to the City of Oakland by Deed from L. D. Macy, a single man to the City of Oakland, a Municipal Corporation dated May 25, 1912, and recorded January 30, 1913, in Liber 2134 of Deeds at page 219.

This deed is given for the purpose of releasing the lease executed by Mrs. V. Twining to first party herein; recorded February 4, 1927 Rec. X-10091.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above described premises, and every part or parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

(Testimony of Charles H. King)

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

Special Site Sign Co. (Seal)

Chas. H. King, Jr., President (seal)

(Corporate Seal) M. S. Mongtomery, Secretary (seal)

Signed, Sealed and Delivered)
In the Presence of—)

STATE OF CALIFORNIA,)
COUNTY OF ALAMEDA) SS. On this 6 day of May in the year one thousand nine hundred and thirty, before me, F. R. Sharp, a Notary Public, in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Charles H. King, Jr., known to me to be the President and M. S. Montgomery, known to me to be the Secretary of the Corporation that executed the within instrument and the officers who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal) F. R. Sharp,

Notary Public In and for said County of Alameda, State of California.

(Testimony of Charles H. King)

Recorded at Request of East Bay Title Insurance Co., May-8, 1930 at 9. A. M.

AA-29328 1.30

Compared
Bk. W. H.
Doc. W. F. S.

Copied May-15-1930—M. F. McKinnon
C. W. BACON
COUNTY RECORDER

State of California,)
County of Alameda,) ss.

I, G. W. Bacon County Recorder in and for Alameda County, do hereby certify that I have compared the annexed and foregoing document with the original record thereof as the same appears in my office, in Liber 2390 of Official Records page 39 and that the annexed and foregoing document is a full, true and correct transcript therefrom, and of the whole of such original record.

Witness my hand and my official seal hereunto set this 10th day of December A. D. 1934

[Seal] G. W. Bacon
County Recorder

By C. E. Lagoria
Deputy Recorder.

(Testimony of Charles H. King)

April 17, 1930

Special Site Sign Company
3225 Louise Street
Oakland, California

Gentlemen:

We are herewith enclosing a Quit Claim Deed for your company to execute and acknowledge before a Notary Public.

We are also enclosing our check for $75.00. This is sent to you according to your telephone communication indicating that you preferred to accept the $75.00 and remove the sign.

Very Truly yours

EAST BAY TITLE INSURANCE COMPANY

By.....

MRG VB
2 Enc.

General Manager.

90–22

12

EAST BAY TITLE INSURANCE CO.
1430 FRANKLIN STREET

No. 15185

Oakland, California Apr 16 1930

Pay to the
order of Special Site Sign Co. $75.00

East Bay Title $75.00 and 00 cts Dollars

M R Greer
Gen. Manager

F. B. Sharp
Auditor

To
FIRST NATIONAL BANK
In Oakland
OAKLAND, CALIF.

[Emblem]: Member Federal Reserve System.

[Emblem]: Safe Deposit Boxes for Rent.

This Check Is Issued in Payment of Items as Per Statement Following. The Endorsement of Payee on Back Will Constitute a Receipt in Full.

Our No 17667 for release of lease omitted from our policy.

Rec. Feb 4 - 1927 Ser X-10091

(Testimony of Charles H. King)

[Stamped on back]: 838 Pay to the Order of Central National Bank 90-4 Oakland, Cal. 90-4 Special Site Sign Co.

[Stamped on back]: Central National Bank 90-4 Oakland Cal Apr 26 1930 90-4 Paid Through Clearing House

No. 5673-C Special Site vs. Foster & Kleiser Deft Exhibit No. DDD Filed 1/4 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: We had a lease from Mrs. Twining on the property and recorded that ourselves. The Title Company apparently missed that recordation in examining the title when the property was sold to Milliken. We would not get off the property although Milliken asked us to do it. The Title Company had two or three conferences with me and I would not get off or give them what I claimed were our rights on the property. The Title Company had to pay us $75 to clear the title to the property and to take our board off. The lease was one of our short form leases which contained no provision terminating the lease on a transfer of title . Our board did not block out the residence behind it even partially. The rear end of the residence was 75 feet or more behind the board. Our board did not block that out from the street any more than anything else would block it. I knew that Foster & Kleiser Company had obtained a lease on that property from Dr. Milliken after he had acquired

(Testimony of Charles H. King)

title. I also know that Foster & Kleiser tore up the lease in the presence of Dr. Milliken to relieve him of any embarrassment. I didn't tell my counsel about this quitclaim deed to Dr. Milliken because I had forgotten entirely about it and had forgotten receiving $75 for it. I never see the checks that come into the office. They are deposited by Mrs. Montgomery. I saw the deed and I recall the transaction now.

MR. CLARK: Now, if your Honor please, with respect to the Milliken property I am going to move, for the record, that all testimony of this witness on direct examination with respect to the value of that propery be sricken from the record and taken from the jury.

THE COURT: Is it conclusive against him that he quitclaimed or cancelled his lease, whatever the process was?

MR. CLARK: I think it is, your Honor, and before your Honor rules, may I ask the witness a question?

BY MR. CLARK:

I promised Dr. Milliken in a conversation I had with him shortly before February 25, 1930 that I would either vacate the premises within three days thereafter, or in the meantime arrange with him a form of lease acceptable to him. I cannot remember whether I also told him that I would execute a lease that in terms, price, tenure and so forth, would be acceptable to him. There was never such a lease executed. The reason was that he wanted an exorbitant price for it and said he would give it to Foster & Kleiser. That was in February, 1930 and, as I recall it, Foster & Kleiser's lease was in effect at

(Testimony of Charles H. King)

that time. Milliken told me that. I believe there is another letter there from Milliken stating that he had given it to Foster & Kleiser.

THE COURT: The motion to strike will be denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 199.

Witness continuing: I was in business in Oakland when H. B. Varney was in the advertising business there and when J. Charles Greene was in the outdoor advertising business in San Francisco.

In those days San Francisco was the financial and business center of the Pacific Coast. Most of the large national distributors of goods had representatives in San Francisco. The physical appearance of an outdoor advertising plant around the Bay District was therefore a matter of some importance. The appearance of a plant is always important. It was of importance then because of the fact, among others, that the national distributors had representatives at San Francisco. A good deal of the national outdoor advertising business in those days was secured by contacts made with the San Francisco representatives of the advertising concerns. I don't recall how much of that business we secured in those days.

I remember the physical condition and appearance of the J. Charles Greene plant in San Francisco during 1913 and 1914. It was on a par with all other plants at that time, including mine, in physical appearance and attractiveness. I did not know that the J. Charles Greene

(Testimony of Charles H. King)

plant went into the hands of the San Francisco Board of Trade. I knew that Foster & Kleiser bought them. I had never heard that the Greene plant was practically bankrupt in 1915. I did not try to buy the assets of that plant.

The Varney plant in Oakland in 1915, 1916 and 1917 was very good and was apparently making progress. I always thought they were. I know that Foster & Kleiser purchased the Varney plant in Oakland and Los Angeles in 1919, and I knew about it at the time. It never occurred to me to go in and buy either the assets of the J. Charles Greene plant in 1915 or the Varney plant in 1918. I was not in a position to buy a plant of that size. I was not satisfied with the business that I had at that time but I did not have money enough to buy such a plant.

The principal place of business of the Special Site Sign Company is in Oakland in Alameda County, and has been since the organization of the company in 1916. I have lived in that county during that length of time and live there now.

Q Will you please state why you filed, or the Special Site Sign Company filed this present litigation in Los Angeles?

MR. GLENSOR: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 200.

(Testimony of Charles H. King)

It was thereupon stipulated that if counsel for one defendant asked a question and that question was objected to and the objection was sustained by the court, it might be deemed that the other defendant asked the same question, that the same objection was made and an exception tion saved to the ruling of the court, and that the original agreement between counsel be extended to that extent.

Witness continuing: With regard to the Kennedy property, Foster & Kleiser built out that board and rendered it partially worthless.

Mr. Clark thereupon read to the witness his testimony on direct examination with reference to the value of the Kennedy site.

Witness continuing: I don't believe I want to change that testimony in any particular. My testimony is that after the block-out by Foster & Kleiser, the Kennedy site was so depreciated in value that we could not get the rent for it from national advertisers that we were receiving from Veedol, whose sign was on the structure on that location. In a general way it was my intention in giving the testimony on direct examination to give the jury the impression that I did not receive as much for the advertising on that property after this alleged block-out as I did before. The location was not as good, it was partially blocked. That being so it was natually not worth as much money. I may have received more for the advertising but it was just a matter of salesmanship probably, or a lucky circumstance.

THE COURT: Do you mean that the market value was less, is that what you mean, distinguishing between market value and what you actually received?

(Testimony of Charles H. King)

A. Yes, that is what I mean, your Honor. The sign actually was not worth as much money, being partially blocked. I may have gotten more.

I am sure I don't know whether I did or did not get more for that site. That property is on 24th Avenue between East 14th and East 12th Street.

According to the contract register of Special Site Sign Company, we were receiving $18.50 a month from the O. J. Gude Company for advertising Veedol Oil on the structure on the Kennedy property. The contract register also shows that approximately two years after the partial build-out by Foster & Kleiser Company we received $20.00 a month for a twelve months contract with an advertiser for the same board on the same location. According to my books we also sold the same board on a twelve months contract to an advertiser for $19 a month three years after this build-out. I was fortunate in getting more than the market value. The facts are that while we were receiving $18.50 a month for the boards before alleged block-out, we got $19 and $20 a month for it afterwards. I should have been getting $35 in the first instance. I don't believe that I care to change my testimony that I gave the other day.

I recall the Bruecker location. That is a location that we got after Foster & Kleiser's actions compelled us to paint out a wall that we had a location on. The advertiser on that wall was the Champion Spark Plugs. I said that the cost of painting out that was was $26. That was more than a painting out. There was a structure on the wall that had to be removed. That $26 was to restore the wall to the condition in which it was before

(Testimony of Charles H. King)

we got our lease. You understood my testimony on direct examination correctly, when you understood it to mean that the wall location was more valuable than the roof location because the wall location was nearer eye-level than the roof location. I do not desire to change that testimony. I have no recollection of what price we were obtaining for our wall location nor do I recall the price we got for our roof location. It may be true that we were getting $22.50 a month from the Champion Spark Plug Company for the wall location and that we got $75 a month from them for the roof location, but that doesn't alter the fact that the wall sign was much the better of the two and more valuable. That wall location was East 12th Street between 13th and 14th. The contract register shows a contract with the Champion Spark Plug Company dated 6/18/20 to run 24 months from 7/1/1920 to 7/1/1922. It appears that we were receiving $22.50 a month for that wall location from the Champion Spark Plug Company. Now, for that roof location, we received $75 a month, but I would like to explain that. The roof sign was an illuminated sign and the wall was not illuminated. I said that the roof sign was not as valuable as the wall sign because it was not eye-level. That is true. When I gave my testimony on direct examination I intended that the jury should understand that the roof location was less valuable than the wall location because the roof location was not eye-level. That's exactly what I intended. I don't desire to change that testimony in any way.

I wrote the original of this copy of a letter from Special Site Sign Company to Mr. O. D. Hamlin on December 4, 1920.

The letter referred to by the witness was thereupon received in evidence and marked Defendant's Exhibit LLL in evidence and read to the jury. Said exhibit is in words and figures as follows:

[Defendants' Exhibit No. LLL.]

12/4/20

Dr. O. D. Hamlin,
Federal Realty Bldg.,
Oakland, Calif.

Dear Sir:—

It was my wish to lease the Hamlin property for the Special Site Sign Company jointly with Raffetto, Gnecco and Company, for $4,250. The Special Site Sign Company to have the privilege to sublet for an oil station and a stone yard, which I figured would net us $1,200.

Our half of the $4,250.00 would be $2,125.00, less $1,200.00 from subletting the concessions, which would leave the advertising privilege standing us only $925.00. At this figure we could have made a fair profit.

As we have outside stock holders in the Special Site Sign Company, I am governed more or less by the Board of Directors, expecially in contracts amounting to over $10,000.00. I could not convince the directors that obligating the Company jointly with Raffetto, Gnecco & Company, would be good business, though I personally would have done so.

(Testimony of Charles H. King)

Therefore, the only proposition I can make is for us to give up the subletting privilege to Raffetto, Genecco & Company, or yourself, and lease the advertising privilege only. For which I will pay $1,200.00 per year, as per enclosed lease, which in reality is a better offer, as we are releasing the sublet*t*ing privilege, worth $1,200.00 or more.

-2-

Our present offer is equivalent to $2,400.00 in place of $2,125.00, with Raffetto, Gnecco & Company's $2,125.00, and the oil station and stone yard $1,200.00, you will receive $4,450.00, or a $200.00 better deal.

Yours very truly,

SPECIAL SITE SIGN COMPANY.

By

President & Gen. Mgr.

CHK:S

No. 5673-C Special Site vs. Foster & Kleiser Deft Exhibit No. LLL Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: The facts are that the Hamlin lease was to expire on January 15, 1921. On December 4, 1920, I concluded my negotiations and my attempt to renew for a further period. The rental of $4,250 referred to in that letter, Defendants' Exhibit LLL, was the rental per year. I understand that Foster & Kleiser Company paid $5,000 annually for the lease on that property. I was willing to obligate the Special Site Sign Company for $4,250, but I didn't do it. That is the property which I said Mr. Lausen talked to me about in the Palace Hotel about March, 1920, and it is also the property upon which I said that the signs were a mess. It is not a fact that Lausen said to me on that occasion, in substance or effect, that the Hamlin property had to be cleaned up if Foster & Kleiser Company had to do it themselves. He said they had to have it if it cost them $10,000. Mr. Lausen made no suggestion to me concerning the unsightly condition of the Hamlin property during that conversation. We did not have lunch together. I testified on direct examination that the loss of the Hamlin location affected our business and our relations with our advertisers very decidedly, that the Lenz Motor Company, Champion Spark Plug and Standard Fence cancelled their contracts at expiration and we lost their business of advertising because we could not deliver equally as good showings as the contract called for. I don't recall that subsequently to January 15, 1921, we received from the Champion Spark Plug Company a contract at $115 a month for three signs, including the Carter sign and the Arata sign on July 1, 1922, which continued with certain rate adjustments to July 1, 1927. I would have to look that up. I think that after July, 1922 we

(Testimony of Charles H. King)

received another contract from the Champion Spark Plug Company at $75 a month for one Bay board from November 1, 1922 which continued to December 1, 1925. We had a board on the Bay farm. I don't recall the dates. I think we got it from them after January 15, 1921. If the books show that after January 15, 1921 we received a contract from the Standard Fence Company for one year from October 1, 1922 to October 1, 1923 at $45 a month, another from the same party for three years from April 16, 1923 to April 16, 1926 at $15 a month, and still another for three years from March 1, 1924 to March 1, 1927 at $78.75, then it must be so. You will not have to show me my books. I will take your word for it. There is no doubt in my mind about it, if the books show it. I don't know whether it is a fact that the Lenz contract was defaulted on November 1, 1920, two and a half months before I claimed we lost the Hamlin location. The contract register shows a contract with F. J. Lenz & Company for three years, dated 4-24-18 to run 36 months 6-1-18 to 6-1-21 at $35 a month. We had two boards on the Hamlin location that were advertising Lenz. I don't see anything here to indicate whether or not that contract defaulted in November, 1920. If they paid, the entry in the book would show that. It looks here as though they had. I see these are all entered up here.

(The witness then testified that he was unable to find the Special Site Sign Company leases for the Southern Pacific property, the Lagomarsino property, the Catherine Hittel property, the Provensal property, the Rueter property or the property described as the "No Man's" piece south of the Tuolomne River near Modesto. He also stated that

(Testimony of Charles H. King)

Special Site Sign Company never had a lease on the Capwell property in Oakland at Broadway and Hobart Streets.)

Witness continuing: With respect to the Lagomarsino property I testified that there were no other advertising signs on that property when we were on it. That is correct.

With regard to the Coppa property, the northwest corner of School and Mission Streets in San Francisco, we consented that the sign on that location be removed. They had knocked us off the location. I leased that property from Mr. Coppa, who represented himself to be the owner. I don't know whether he was or not. I don't recall that he was in possession at the time. I believe I expressly testified that he was not the tenant at the time.

I got the terms of the lease which I say we had from Lagomarsino on the Los-Angeles-San Francisco Highway between Holy Cross Station and Baden from some of our records. All this data was gotten from records and what I could recall from memory. I remember testifying that at the time we took that lease that there were no advertising structures on the premises anywhere. I knew at that time that the property belonged to the Cowell Lime & Cement Company or the Cowell Estate. I leased the property myself. I had known it several years before I leased it and passed it frequently, looking for locations. I think I had my eye on it for a good while. It is not a fact that shortly before I got that property or at the time I got the lease on it from Lagomarsino that there were two bulletins on it. I am sure of that. There was nothing at

(Testimony of Charles H. King)

all there. There was no small pump-house on the premises.

We paid rent to Foster & Kleiser Company on the Hittell property on the Great Highway, Rivera Street, San Francisco. We paid rent to them in spite of the fact that we had a right to the property ourselves because they had secured a lease. We had live copy on the board and paid the rent to keep them from taking the board down.

I did not measure the dimensions of the lay-out of the property at Grove and University which I referred to as the P & B property. I never measured the distance from the northwest corner of Grove and University to the east edge of what I termed the easement. I would judge it was 90 feet. That is merely an estimate and the fact is that I don't know what the distance is. I did not place any qualification on the distance shown on my chart here, Plaintiff's Exhibit 200. I did not think it was necessary because the driveway, according to Mr. Williamson, was not under lease to anyone. Our lease is dated October 21, 1929 and that is when we got it. This lease from L. M. Williamson to Foster & Kleiser Company looks like the lease that Mr. Hughes showed me. It calls for property on University, north line, 90 feet west of Grove, 50 feet. I don't recall whether Mr. Hughes told me at the time that that 50 feet included the driveway. At the time we got the lease there were no signs on any of the locations shown on Plaintiff's Exhibit 200, parcels 1, 2 or 3. There was not a single board on any of them, to the best of my recollection, in October, 1929. Mr. Hughes did not tell me that this lease covered the driveway. I said in my direct testimony that he said it covered our sign. It was probably just after that that I ascertained that it did not cover the driveway. possibly a month later.

The lease referred to *the by* witness was thereupon received in evidence and marked Defendants' Exhibit NNN in evidence, and is in words and figures as follows, to-wit:

[Defendant's Exhibit No. NNN.]

A-1

Copy delivered 2/12/30

[Crest]
Foster and Kleiser
COMPANY

Re-Newal
No Copy W. A. H.
No. 2088

City Berkeley, State Calif, Date Nov 19, 1928

In consideration of Five & no/100 ($5.00) Dollars per year, payable Annually in advance, the undersigned Lessor hereby leases to Foster and Kleiser Company, Lessee, the exclusive use of the premises (with free access to and upon same) described as University N. L. 90' W Grove 50' Blk 2060 Por lot 1 Rental to be increased to $12.50 per year when advertising structure is erected, if same is illuminated situated in the City of Berkeley, County of Alameda, State of Calif for a period of ten years from Sept 6th, 1928, for the purpose of erecting and maintaining painted, printed, or illuminated advertising signs, including necessary structures, devices and connections.

(Testimony of Charles H. King)

In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the Lessee shall, upon the return to it of all rent paid for the unexpired term of this lease and upon thirty days' written notice from the Lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the Lessee shall have the right to re-enter said premises and reconstruct said signs and structures

In the event a portion only of the property is improved by erecting thereon a permanent building, the Lessee has the option of using the remaining portion on the same terms as herein provided except the rental shall be proportionately reduced.

If the view of the property or advertising signs is obstructed, or impaired, or the use of such signs is prevented by law, the Lessee shall have the right to cancel this agreement and receive all rent paid for the unexpired term of this lease, by giving the Lessor notice in writing of such obstruction, impairment, or prevention of use.

In the event a portion only of the view of the property or advertising signs is obstructed, or impaired, the Lessee has the option of using the remaining portion on the same terms as herein provided, except the rental shall be proportionately reduced.

After the term hereof, this lease shall continue in force from year to year unless terminated at the end of such

term, or any additional year thereof, upon written notice of termination by the Lessor or Lessee, served not less than thirty (30) days before the end of such term or additional year.

H

The Lessee shall protect and save harmless the Lessor from all damage to persons or property by reason of accidents resulting from the neglect or wilful acts of its agents, employees or workmen in the construction, maintenance, repair or removal of its signs on said premises.

The Lessee is and shall remain the owner of all signs and improvements placed by it on said property and has the right to remove same at any time.

In the event that the Lessee, for the purpose of improving the appearance of said property, shall place or plant gravel, lawns, shrubs or flowers thereon, or install water service pipes and fittings for the upkeep of said property, then the Lessee shall at all times be deemed the owner of such gravel, lawns, shrubs, flowers, pipes and fittings and shall have the right to dig up and remove same at any time.

The Lessor represents that he is the { Owner ✓ / ~~Tenant~~ / ~~Agent~~ } of the premises above described and has the authority to make this lease. The word "Lessor" as herein used shall include and mean "Lessors."

(Testimony of Charles H. King)

It is expressly understood that Foster and Kleiser Company is not bound by any stipulations, representations, or promises not written or printed on this contract. This lease is binding upon the heirs, assigns and successors of both the Lessor and the Lessee.

Accepted by FOSTER AND KLEISER COMPANY,
Lessee.

Per H H Walters

L. M. WILLIAMSON

2816 Oak Knoll Terrace
Berkeley-

Signed:

L M Williamson

.....
Lessors

.....
Address

[On back]:

[Diagram of premises.]

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. NNN Filed 1/8 1935 R. S. Zimmerman. Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: With regard to the John P. Snow property, our board was right in the pathway between the laundry building and the Temescal Creek bank. I missed our board right after Foster & Kleiser had built a poster on the north side of the creek. Their board faced north.

MR. CLARK: I now propose to show that Special Site Sign Company had instructions from the State to remove this board as a traffic hazard.

Mr. Clark thereupon showed the witness two photostatic copies numbered 403 and 404, respectively, of notices issued by the California State Department of Public Works, Division of Highways, Outdoor Advertising Section, notifying Special Site Sign Company of violations of the Outdoor Advertising Act of the State of California, California Statutes 1933, Chapter 341, page 938.

Witness continuing: I wouldn't be a bit surprised if we had not received the originals of these photostatic copies numbered 403 and 404 which you show me. This is another piece of Foster & Kleiser's work. That is State vandalism. This law was put through by Foster & Kleiser. The State has wrecked dozens of our signs illegally. This sign is absolutely according to the State law because there is 500 feet unobstructed view there. These people are all wrong. It don't matter if they did send that to us. I notice on this photostat under "12", it states, "obstructs a clear view of approaching vehicles inside of 500 feet". That is absolutely untrue. Those people ran over us

(Testimony of Charles H. King)

roughshod and ruined our signs absolutely contrary to all our rights. Foster & Kleiser were up there and Roy McNeill and Mr. Foster got that law through. It is absolutely my testimony that Foster & Kleiser by legislation set out to put us out of business. The State license law requiring payment of a license and requiring an imprint or tag of the owner of a board to be on it is also their nefarious work. Those things should not be. I don't know whether I received the originals of these photostats or not. I wouldn't doubt but what I did.

With regard to the Dos Reis property it was stipulated that the Carquinez Bridge was opened to travel on May 21, 1927.

Witness continuing: We paid $50 down for our lease on the Dos Reis property to hold the lease until the Bridge was opened and to pay $20 a month beginning with the opening of the Bridge to travel. I believe we started paying $20 a month in May or June, 1927. The earliest rental check here in my file is dated November, 1927.

I recall writing the original of this copy of a letter to Mrs. O'Neil, dated May 8, 1924.

The letter referred to by the witness was thereupon received in evidence, marked Defendants' Exhibit QQQ in evidence, and was read to the jury. Said exhibit is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Defendants' Exhibit No. QQQ.]

SPECIAL SITE SIGN COMPANY
Oakland, Calif.

May 8, 1924

Mrs. Ria O'Neil
2444 Ashby St.,
Berkeley, Calif.

Dear Madam:

On February 20th we sold to F. B. Heider, #798 Post St., San Francisco, the sign on your ranch at the junction of the Happy Valley and Tunnel Roads. Up to that time we had three signs on your ranch, including the one sold to Heider. The other two are painted with copy as follows.

1. Standard Fence Co.
2. Federal Tire.

On January 25th I paid you $29.00 rental covering these three signs from Feb. 1, 1924 to Feb. 1, 1925, divided as follows:

Sign Sold to F. B. Heider	$12.00
Standard Fence Sign	12.00
Federal Tire Sign	5.00
	$29.00

Mr. Heider, hereafter, will take care of payments promptly on the Board purchased by him, and we will pay you rentals on the remaining two boards $17.00.

(Testimony of Charles H. King)

Trusting this makes the matter clear to you, we beg to remain

Yours very truly,

SPECIAL SITE SIGN CO.

By (signed) Charles H. King
GENERAL MANAGER

CHK-MSM

DUPLICATE

No. 5673-C Special Site vs. Foster & Kleiser Deft Exhibit No. QQQ Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: The thing that happened in the O'Neil property was that Mrs. O'Neil conveyed that property to her two daughters in 1924. We did not dispute the effect of that upon our lease rights but we disputed the fact that there was a transfer. When we found that there had been a transfer, we took our boards off. Our rights were at an end there then, but Foster & Kleiser's boards went on the property immediately after. I did not know of my own knowledge. It is not entirely correct to say that we, without consultation with Mrs. O'Neil, transferred to F. B. Heider the location on her property and attempted to substitute him for ourselves as a tenant, in May, 1924. We explained to Mrs. O'Neil what we were to her at the time.

(Testimony of Charles H. King)

BY MR. GLENSOR:

I know of my own knowledge that Foster & Kleiser's boards went on the property. They built them immediately.

BY MR. CLARK:

I don't recall receiving a letter from the Richfield Oil Company under date of August 8, 1929, in connection with the Garibaldi property north of Merced. My lease covering the Garibaldi property shows that the location was blocked out about April 15, 1929. There is a footnote on the lease stating, "Blocked April 15, 1929".

The contract register of Special Site Sign Company shows a Standard Fence Company contract dated January 17, 1924, to run for 36 months from March 1, 1924 to March 1, 1927, at $78.75 per month. The register also shows that one of those locations was the Garibaldi location. Our unit price for that bulletin was $15.75. The register also shows that it was agreed on March 3, 1927, that the contract should lapse, that is that they were not to make any further payments under it.

We were paying rent to Garibaldi and did not search the records to find out who the owner of the property was. Special Site Sign Company did not follow the custom to ascertain who the owner was. Garibaldi was in possession of this property and we leased from him sometime in 1919. I never heard that the property changed hands. I did not know that the Richfield Oil Company acquired a lease on that property from Mrs. Ashe for the purpose of constructing a landing field for airplanes. We were never notified by the Richfield Oil Company to remove our structures. I have no recollection of receiving the

(Testimony of Charles H. King)

original of this copy of a letter which you show me from the Richfield Oil Company.

The letter referred to by the witness was thereupon marked Defendants' Exhibit RRR for Identification.

Witness continuing: If we have not produced our lease on the Vignolo property on Cherokee Lane, I have not found it. There is nothing in our records here to show that we had a lease on that location but we never built signs on property where we didn't have a lease, with the exception of the property on the Tuolumne River, south of Modesto.

The memorandum that I used when I was testifying says that on November 28, 1924, "We attempted to secure a renewal of our lease two years in advance of its expiration but received no response from Mr. Vignolo." That date would make our lease expire in 1926. We lost our lease on April 23, 1928. The facts are that I can't recall the terms right now but there are records from which that could be determined. I testified on direct examination that our lease expired in 1926 and that Foster & Kleiser were on the property before that. I saw them on the property. I believe they built right next to the sign. I also testified on direct examination that Foster & Kleiser did not appear on the property until after our sign was removed and that that was in about 1925, before the expiration of our lease. I must have been mistaken on the

dates. In my direct testimony I stated that the beginning of the term of the lease on the Vignolo property would have to be determined by the record which Mr. Clark has, that is the contract register. I have now examined the ledger sheets and the contract register to determine the date it was lost. There is nothing on that sheet except where the property is situated and nothing with respect to the terms of the lease.

A letter from Mrs. M. A. Burns to Special Site Sign Company dated April 5, 1920, a letter from Foster & Kleiser Company to Special Site Sign Company dated June 26, 1922, a letter from Foster & Kleiser Company to Special Site Sign Company dated July 17, 1922, a letter to Foster & Kleiser Company from Special Site Sign Company dated July 19, 1922, a letter from Foster & Kleiser Company to Special Site Sign Company dated July 20, 1922, together with the invoice referred to in the letter of July 19, 1922 and the bill of sale referred to in the letter of July 20, 1922, were thereupon received in evidence and marked Defendants' Exhibit SSS and read to the jury. Said Defendants' Exhibit SSS in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Defendant's Exhibit No. SSS.]

2319 Mission Street,
San Francisco, Calif.

April 5, 1920.

Special Site Sign Co.,
308—12th St.,
Oakland, Calif.

My dear Sirs.

The sign site adjacent to Max Roth's stoneyard in Colma, upon which you have an Ajax Tire Sign is my property and has been rented by me to Foster and Kleiser of this city. Kindly remove your sign at once and oblige

Yours truly

(Mrs.) M. A. Burns

L E G

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
June 26, 1922

Special Site Sign Company
208 12th St.,
Oakland, California

Gentlemen: Attention, Mr. C. H. King

We would appreciate a reply to our letter of June 12th, regarding the Ajax Tire bulletin on *Msx* Roth Monument Works opp. Holy Cross.

Very truly yours,

FOSTER AND KLEISER COMPANY
D. R. McNeill Jr.
San Francisco Manager.

VBS. CHK

SAN FRANCISCO BRANCH

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING
273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
July 17th, 1922.

Special Site Sign Company,
208-12th Street,
Oakland, Calif.
Attention: Mr. C. H. King

Gentlemen:

Replying to your letter with reference to the 50x10 Ajax Tire Bulletin on the Max Roth property beg to advise that in our opinion the price set on the structure of $75.00 is considerably more than the bulletin is actually worth. However, upon your advice that $50.00 would be acceptable, we will immediately mail check covering, together with bill of sale for your signature.

With regard to the display on Sloat Boulevard, this matter has been refered to our Mr. Young who has charge of our Leasing Department, and he will communicate with you further. However, there is no doubt that we can arrive at a solution mutually agreeable.

Very truly yours,
FOSTER AND KLEISER COMPANY,
by D. R. McNeill Jr.
San Francisco Manager.

DRMcN:OHB

SAN FRANCISCO BRANCH

(Testimony of Charles H. King)

SPECIAL SITE SIGN CO.
Phone Oakland 300
308 Twelfth Street

[Photograph]:

PIG & WHISTLE CANDIES
Floating on San Francisco Bay
Fifteen Million People Annually Read this Sign.

Oakland, California July 19, 1922.

[Photograph]:

Oakland Suburban Electric Railroad systems carry 36,000,000 people annually. We cover them all.

[Photograph]:

To reach the automobile we have special locations on the Highway.

[Photograph]:

Our city locations are special. They cover the entire population with few signs, thus giving you maximum service at minimum cost.

Messrs. Foster & Kleiser,
273 Valencia St.,
San Francisco,
California.

(Testimony of Charles H. King)

Attention D. R. McNeill Jr.,

Gentlemen:–

In response to yours of July 17th we are enclosing herewith our invoice covering the 10x50′ Ajax Tire Bulletin on the Max Roth property in accordance with your offer.

Thanking you in advance for your remittance to cover, we are,

Yours very truly,
SPECIAL SITE SIGN COMPANY.

By Charles H King,
Secretary & Manager.

FEN:D

[Stamped on face]: Hsk.√ Ass't Const. Paint Post L Post D Sales Acct. RECEIVED JUL 20 1922 FOSTER & KLEISER COMPANY Purch. Auto Nat'l Gen'l File√ Space Ans.....

Oakland California
Messrs. Foster & Kleiser
273 Valencia St., San Francisco

[Crest]
OAKLAND
TO SPECIAL SITE SIGN CO. DR.
CALIF.

308 Twelfth Street

To 1 – 10 x 50′ Bulletin (Max Roth property)
as agreed $50.00

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser

— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street

Telephone Market 10

San Francisco, Cal.
July 20, 1922

Special Site Sign Company
308- 12th Street
Oakland, Calif.
Attention: Mr. Chas. A. King. [Written in red]

Gentlemen:–

Acknowledging receipt of your letter of the 19th inst., enclosing invoice, we return herewith our check in the amount of Fifty ($50.00) Dollars; together with Bill of Sale in duplicate, one copy of which you will please sign and return for our files.

Very truly yours,

FOSTER AND KLEISER COMPANY

By D. R. McNeill Jr.
San Francisco Manager

DRMc:D
Incls. 3.

CHK

SAN FRANCISCO BRANCH

(Testimony of Charles H. King)

150

In consideration of the sum of Fifty (50) Dollars, receipt of which is hereby acknowledged, the Special Site Sign Co. has this day transferred, assigned, set over and sold, and does hereby sell, transfer, assign and set over unto Foster and Kleiser Company, the following described property, to wit:

One 10x50′ bulletin board bearing the advertisement of Ajax Tires

on the side wall and roof of the building known as the

West

Max Roth Monumental Works, on the ~~South~~ side of the State Highway North of Cypress Lawn.

SPECIAL SITE SIGN CO.

By.....

FOSTER AND KLEISER COMPANY

By& D. R. McNeill J

Dated July. 20. 1922

CHK

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. SSS Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: It was my habit to sign my letters "Charles H. King" or "Charles H. King, Jr.", either way.

With reference to the Conti property, as I recall, our rental was raised there several times. Conti stated that Foster & Kleiser made contacts there with him and were willing to pay much more money. We did not hold the property. I believe we were unable to renew our lease there. Our rent was paid on that property in December, 1927. I believe we paid up all our rent. We do not have any of the rental checks on that property. I recall receiving this letter from Conti to the effect that he hadn't heard from us since June, 1923 and that if he didn't hear from us within five days, he would declare our contract null and void and pull down our sign; not anything like letters that Conti usually wrote us. That is his signature on it. I believe there is some mistake here. I think we had checks. The rental was paid.

I remember my testimony to the effect that we had a verbal lease on the Mary McDonald property at Claremont, north line, 35 feet on Telegraph Avenue. I can't recall offhand to what date we paid our rent. I can't say just how the rental was paid but we have cancelled checks that will show. I don't know whether it is a fact that we were in arrears in our rent between February 1, 1931 and August 29, 1931 or whether on August 29, 1931 we gave Mrs. McDonald a check stating, "Rent for March and

(Testimony of Charles H. King)

April $16, balance $24." We removed our structures from that property for the reason that she wouldn't let us go on it. She wouldn't let us go on the property because she said she could get more money. She wanted us to pay more and we were paying too much as it was. We were paying $96 a year. I don't recall what it was she could get but she wanted us off because we were not paying enough. I don't know what she got. I don't recall examining Foster & Kleiser's office record card on that property. It may be that Foster & Kleiser got the property for $50 a year and that we were paying $96. I recall that the bill of particulars in this case cites that property as a piece of property for which Foster & Kleiser offered rental in excess of its value. I am not sure that they paid $50. Their office record card may show it but I can't understand why she would take less.

Regarding my testimony about a piece of property which I called the Rankins property at 3108 Telegraph Avenue, I recall receiving this letter from Gillis & Edwards dated October 9, 1928. That matter was straightened out with Mrs. Coppage later. Mrs. Coppage was the owner of the property, and this letter is from people purporting to be her attorneys. It was in response to this letter that I called on Mrs. Coppage.

The letter referred to by the witness was thereupon received in evidence, marked Defendants' Exhibit TTT in evidence, and read to the jury. Said exhibit is in words and figures as follows, to-wit:

[Defendant's Exhibit No. TTT.]

Kenneth C. Gillis Darrell B. Edwards

GILLIS & EDWARDS

Attorneys at Law

Latham Square Building
16th Street and Telegraph Avenue
Oakland, California

Telephone Lakeside 3496

October 9, 1928

Special Site Sign Co.,
3225 Louise Street,
Oakland,
California.

Dear Sirs:

2515 Ashby Thornwall 1795

Mrs. Mary Shields Coppage / who owns the building at 38th and Telegraph known as 3801 and 3803 Telegraph Avenue has requested me to take up with you the matter of your sign and fixtures on the south wall of this building. Your sign and the fixtures were placed there without her approval and as she is desirous of doing some remodeling to the building, she desired me to request that you remove the sign and the fixtures from this property.

(Testimony of Charles H. King)

Will you kindly notify me when you will accomplish this.

Appreciating your early reply, we are

Yours very truly,

GILLIS & EDWARDS

Kenneth C Gillis

KCG:CB BY

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. TTT in evid Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: The Naftaly property was a key location because it was on East 12th Street, one of Oakland's busiest thoroughfares. We had 4x6 structures on it. The east line of the property was about 25 feet. I don't recall exactly the value I placed on it. It would have been suitable for a 24-sheet illuminated poster. The dimensions of a 24-sheet illuminated poster panel are 25 by 10½ feet. We would have placed a 24-sheet poster panel on the Naftaly property by placing it on the east line. It was not a head-on shot.

The Banchero location was 50 feet wide. I valued that at $1,545. That was suitable for two 24-sheet illuminated bulletins. The Naftaly property is not suitable for an illuminated poster panel because it is a shorter shot. The traffic is possibly as heavy in front of the Naftaly property as it was in front of the Banchero property but the

location was not as good as the Banchero property; yet it was a key location. I don't believe it was suitable for a poster panel because it is too short a shot. Key locations are not necessary for 4x6 targets. The Naftaly location would have been suitable for a 9-sheet or a 3-sheet or a 4 by 6. I believe I placed a value of $96 on the Naftaly location. In applying my formula I took the income that that type of sign would bring, which was $4 a month, or over a period of six years, $288. That was a key location. I could not have sold that account without locations of that kind. That account was with the Imperial Beverage Company.

I recall the Prout location. I don't recall its dimensions exactly but it was suitable for a 6-sheet or a 4 by 6 or a 9-sheet. That was also a key location. The locations on that street are very hard to secure. I valued it at $72. A 9-sheet is three times the size of a 3-sheet. I could not say what the dimensions of a 1-sheet are, I never measured one. A 24-sheet poster is 9½ by 24 feet. I don't know the dimensions of a 9-sheet. It was never necessary to know.

In testifying on my direct examination with respect to the one-third that I added as an arbitrary figure to get the value of a location to represent the value of the plant as a whole, I stated that a nice bulletin on a key location created new business for our firm. As a result of the mess of bulletins on the Hamlin location, we got one of the biggest contracts that we ever had. We got the Champion Spark Plug account for that reason only and we got the Dreadnaught Tire Company for that reason only, notwithstanding what I called the mess of signs there; it was the location.

(Testimony of Charles H. King)

We offered to pay the Donaldson Lithographing Company a commission for posting its service posters. We offer to pay a commission to anyone that will sell our service. We agreed to pay the Donaldson Company a commission for posting their posters on our plant. Anybody in business knows that if you get business from somebody you expect to pay for it. Mr. Lewis, the Pacific Coast representative of the Donaldson Company, never called on me, although according to these letters he was instructed to do so. I never did see him. He did not call on me relative to this Ashby Furniture Company matter.

WEDNESDAY, January 9, 1935.

The following documents from Plaintiff's file were thereupon received in evidence and collectively marked Defendants' Exhibit UUU in evidence: Copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated November 12, 1925, letter from Donaldson Lithographing Company to Special Site Sign Company dated November 17, 1925, copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated August 22, 1929, letter from Donaldson Lithographing Company to Special Site Sign Company dated September 4, 1929, copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated January 23, 1930, letter from Donaldson Lithographing Company to Special Site Sign Company dated January 27, 1930, and two copies of agreements entitled "Service poster agreement" between the Donaldson Lithographing Company and A. F. Co., both dated August 26, 1925. Said letters and documents are in words and figures as follows, to-wit:

[Defendant's Exhibit No. UUU.]

November 12, 1925.

The Donaldson Litho. Co.,
Newport, Kentucky.

Gentlemen:

We wish to know if we can secure from you at once samples of twelve different 24-sheet posters with designs suitable for a furniture concern, also samples of other lines, if possible, at your convenience.

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM GENERAL MANAGER.

(Testimony of Charles H. King)

Established 1863

THE DONALDSON LITHOGRAPHING CO.
Incorporated

[Crest]

Commercial
Poster Advertising Service
Newport, Ky.

Please Attention Reply To
R. D. Carrel

November 17, 1925.

Special Site Sign Co.,
3225 Louise St.,
Oakland, Calif.
Attention – Mr. Chas. H. King, Gen. Mgr.

Gentlemen:

Replying to your favor of November 12th, you seem to be under the impression that we are manufacturers of stock posters and selling the same through such companies as yours or through poster advertising companies. Our business is not conducted on that basis at all.

(Testimony of Charles H. King)

We manufacture a 24-sheet poster advertising service, furnishing local advertisers a different poster each month in the year. However, this service is sold through our own selling organization only, as a poster service posted on the poster boards, we being responsible to the advertiser for the proper conduct of the poster campaign. We have a working arrangement with practically every poster advertising plant of any consequence in the U. S. and have their showings and posting rates on file here in our office, so that we are able to quote advertisers from here or through our salesmen on a representative showing. Poster advertising plants throughout the country allow us a commission of 16-2/3% for whatever space is contracted for on their plants.

Our coast representative is in Los Angeles at the present time and we are referring your letter to him for investigation in reference to your service in Oakland.

Yours very truly,

THE DONALDSON LITHO. CO.

RDC:GB

BY R D Carrel

Sales Manager

(Testimony of Charles H. King)

August 22, 1929

Donaldson Lithographing Co.,
Newport, Kentucky.

Gentlemen:

Will you kindly send us by return mail samples of your stock posters (24-Sheet) and your best prices on same?

Thanking you for your immediate attention, we remain

Yours very truly,

SPECIAL SITE SIGN CO.,
BY

CHK-MSM GENERAL MANAGER.

1924

(Testimony of Charles H. King)

The Donaldson Lithographing Co. Newport, Ky.
Incorporated

Throughout United States and Canada

POSTER ADVERTISING SERVICE

September Fourth 1929

Please Attention Reply To
R. D. Carrel

Special Site Sign Co.,
Oakland, Calif.
Attention – Mr. Chas. H. King

Gentlemen:–

We do not manufacture a line of stock commercial posters, excepting a line of posters that we sell direct to advertisers, as an advertising service, posted on the poster boards.

All of our customers have the exclusivse use of our service posters in their territory that they cover and that is one of the reasons why we sell only through our own selling organization, on our own contracts.

We regret that we do not have any samples to send you, as requested.

Yours very truly,
THE DONALDSON LITHO. CO.
BY: R D Carrel
Sales Manager

RDC:GB

(Testimony of Charles H. King)

Jan. 23, 1930.

The Donaldson Lithographing Co.,
Newport, Kentucky.

Attention: R. D. Carrel, Sales Mgr.

Gentlemen:

An old client of yours, the Ashby Furniture Co., Adeline & Alcatraz Ave., Berkeley, has transferred their advertising account from Foster & Kleiser to this company.

While the business was on the plant of Foster & Kleiser your company furnished the posters and we would like to know if you would continue to supply these posters if the Ashby Furniture Co. wants them.

Awaiting your early response, we are

Yours very truly,

SPECIAL SITE SIGN CO.,
BY
GENERAL MANAGER.

CHK-MSM

(Testimony of Charles H. King)

[Letterhead.]

The Donaldson Lithographing Co. Newport, Ky.
Incorporated
POSTER ADVERTISING SERVICE
Throughout United States and Canada

January Twenty Seventh
1930

Special Site Sign Co.,
Oakland, Calif.

Please Attention Reply To
R. D. Carrel

Attention—Mr. Charles H. King, Gen. Mgr.

Gentlemen:—

Replying to your favor of the 23rd, our posters for the Ashby Furniture Company were sold as an advertising service, posted on the poster boards, as for the furniture business we publish a series of posters, giving the advertiser a new design each month in the year.

We receive from all poster advertising companies, with whom we place business a regular solicitor's commission of 16-2/3% for all business that we place and do not sell in any other manner.

We have no record of your plant and do not know what your showings are or your rates. If you will send us this information, we perhaps can do some business with you. That is, if you want to operate the way we sell. You will understand that our service is sold only to an advertiser in each line in a town.

Yours very truly,

THE DONALDSON LITHO. CO.

BY: R D Carrel
Sales Manager

RDC:GB

(Testimony of Charles H. King)

Form 1052

No..... .....
Classification

SERVICE POSTER AGREEMENT

THE DONALDSON LITHOGRAPHING COMPANY

NEWPORT, KY.

Date Aug. 26 - 25

Purchaser Ashby Furniture Co.

Street Address..... Town Berkeley, Calif.

We hereby order Poster Service, for Six months, to consist of 8 – 24-sheets per month, for which we agree to pay The Donaldson Lithographing Company, Newport, Ky., $34.40 per month, the entire contract to amount to $206.40. Each month's service to be paid for not later than ten days after the expiration of that month's display.

(Testimony of Charles H. King)

It is understood that this service includes pictorial sheets of a different design each month, during the life of this contract. Posters to be displayed on the poster advertising boards in Alameda & Berkeley

Display to commence Jan. 24, 1925 and continue for a alternate
period of six ~~consecutive~~ months;

It is distinctly understood that no agreement or promise has been made in reference to this contract that is not stated hereon, and there is no verbal understanding of any kind that can in any way affect the terms of this agreement.

It is understood that The Donaldson Lithographing Company will not sell this service to any of our competitors for display in the city or cities herein contracted for during the life of this contract.

In consideration of the acceptance of this order, recognizing necessary quantity production involving advanced expenditures and because of the necessity of reserving space for the entirety of the contract, it is hereby understood and agreed that no part of this contract can be countermanded or cancelled. This agreement is subject to the contingencies of transportation and strikes or unavoidable accidents and delays beyond the control of the Donaldson Lithographing Company, and is also subject to acceptance by an officer of said Company.

(Testimony of Charles H. King)

(DESIGNS TO BE POSTED AS FOLLOWS)

Amount	Size	Number	Month to Be Shown
			Jan. 24
			Mch. 24
			May 24
			July 24
			Sept. 24
			Nov. 24

Amount	Size	Number	Month to Be Shown
			.....
			.....
			.....
			.....
			.....
			.....

COPY FOR ADVERTISEMENT

Same as Oakland.

(Please bear in mind that your poster will be most effective with the least copy possible.)

REMARKS: Above is for posters only. Does not include space. Ship posters to Oakland

Purchaser A. F. Co.
S G B Secty Treas

Salesman Lewis.

(Customer)

Form 1052

No..... .....
Classification

SERVICE POSTER AGREEMENT

THE DONALDSON LITHOGRAPHING COMPANY

NEWPORT, KY.

Date Aug. 26 - 25

Purchaser Ashby Furniture Co.
Street Address..... Town Berkeley, Calif.

We hereby order Poster Service, for Six months, to consist of 16 – 24-sheets per month, for which we agree to pay The Donaldson Lithographing Company, Newport, Ky., $68.80 per month, the entire contract to amount to $412.80. Each month's service to be paid for not later than ten days after the expiration of that month's display.

(Testimony of Charles H. King)

It is understood that this service includes pictorial sheets of a different design each month, during the life of this contract. Posters to be displayed on the poster advertising boards in Oakland, Calif.

Display to commence Dec. 24 – 1925 and continue for a alternate
period of Six ~~consecutive~~ months;

It is distinctly understood that no agreement or promise has been made in reference to this contract that is not stated hereon, and there is no verbal understanding of any kind that can in any way affect the terms of this agreement.

It is understood that The Donaldson Lithographing Company will not sell this service to any of our competitors for display in the city or cities herein contracted for during the life of this contract.

In consideration of the acceptance of this order, recognizing necessary quantity production involving advanced expenditures and because of the necessity of reserving space for the entirety of the contract, it is hereby understood and agreed that no part of this contract can be countermanded or cancelled. This agreement is subject to the contingencies of transportation and strikes or unavoidable accidents and delays beyond the control of the Donaldson Lithographing Company, and is also subject to acceptance by an officer of said Company.

(Testimony of Charles H. King)

(DESIGNS TO BE POSTED AS FOLLOWS)

Amount	Size	Number	Month to Be Shown
			Dec. 24
			Feb. 24
			Apr. 24
			June 24
			Aug. 24
			Oct. 24

Amount	Size	Number	Month to Be Shown
			.....
			.....
			.....
			.....
			.....
			.....

COPY FOR ADVERTISEMENT

Same copy, but make up sheet — of color scheme, for new background Mail for approval.

(Please bear in mind that your poster will be most effective with the least copy possible.)

REMARKS: Above is for posters only. Does not include space

Purchaser A. F. Co.
S G B Secty Treas

Salesman Lewis

(Customer)

[Endorsed]: No. 5673-C. Special Site vs. Foster & Kleiser Deft. Exhibit No. UUU for indent. part for ident and part in evid. Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: The letter of November 17, 1925 from the Donaldson Lithographing Company contains some underlining in pencil under some words in the seventh line in the second paragraph. That is my underlining. I got those two copies of the agreements dated August 26, 1925 from the Ashby Furniture Company.

In December, 1920 the Special Site Sign Company took steps to increase its capital stock and increase the number of shares. Up to that time we had a total of 48 shares issued, of which 12 stood in the name of myself as trustee and 12 stood in the name of my brother Joe King as trustee. We increased the stock by 24 shares in December. We did not give any notice to Foster & Kleiser or to Walter F. Foster or to George W. Kleiser that that action was contemplated, nor did we give them any notice afterwards.

BY MR. STERRY:

In answering Mr. Glensor's hypothetical question as to the amount of increase in business we would have made, I assumed the facts in that question to be true. I would not say that I had gone over those facts and elements with my counsel nor that I helped to frame the question. I own a large majority of the stock in the Special Site Sign Company and I am president and general manager. I sure am interested in getting as much damages as I can legitimately. I went over the elements that I thought made up the damage with Mr. Glensor. I don't know that I went over the various elements with my counsel on the question of

damages before the hypothetical question was propounded to me. I suppose I did. In accordance with the question, I assumed that from 1919 to 1930, inclusive, Foster & Kleiser had not acquired 97 independent companies operating in 342 cities on the Pacific Coast, and that the Special Site Sign Company had not lost upwards of 60 locations through various activities of Foster & Kleiser. I took those elements into consideration. In my opinion that was a material element. The number of boards given there, 60, was my fair judgment as to the number of locations I had lost.

I testified as to the approximate cost of removing and constructing the different sizes of boards. That was gathered from my experience in constructing boards throughout the time I have been in business. From 1916 to 1930 I have stated that we constructed about 2,000 boards altogether. That is my very best and fair estimate of the approximate number that we built. When I say that we constructed 2,000 boards I took everything into consideration, the Champion Spark Plug boards that were manufactured and sent out to us, but when I said that we had erected approximately 2,000, I was referring to what I myself had constructed. We constructed those Spark Plug boards. The largest number of advertising structures outside of those Champion boards that we have ever maintained in our plant in any one year was maybe three or four hundred. To the best of my knowledge, we had as many as three or four hundred boards in one year, not counting these Spark Plug signs. I couldn't say in what year we had 300 boards. We now have about 200. I can't answer your questions as to how many boards we

had before we started doing any posting. Those are questions that can't be answered without the books. I can't remember any definite number.

In the hypothetical question propounded to me by Mr. Glensor there is an assumption that we have been interfered with in our business and interfered with in the development of our plant and also that we have not been able to get national business. I remember those elements. I assumed them in answering the question. I attribute our greatest loss of profits to the business we never secured. It is not a fact that during all of the time that I have been testifying about that we did not have a sufficient plant on which to have conducted any national business or Pacific Coast national business of any size. I would not say it was true at all. Our plant was in a position to handle national accounts. We were in a position to increase the size of it. We were in a position that if we had gotten the business under the right conditions, we could have increased our plant sufficiently to have taken care of that business, but not with the competition that we were battling. Assuming conditions to be as I have known them always to exist, I would not say that we were in a condition to handle any national business if we had gotten it. We were hardly able to keep going. We really deserved credit for being in business. The fact that our plant was not adequate had everything to do with our failure to attract national business. Foster & Kleiser was the cause. I stated that we had not been able to go into the poster business because I understood that we could not get posters. I have testified that, assuming an ideal condition, that if we had not been confronted with the

competition of which I complain, we would, in my opinion, have made a net profit of 25 per cent from the time we went into business in 1916 up until the time the depression came in 1930. That is my honest opinion. There is nothing speculative about it. The only way we could make profit was through sales. We had no other income except selling advertisements.

In my formula as to the value of advertising sites I took as one element 25 per cent of the gross income that I thought we should have gotten from any one site. We never found it necessary to carry any secured unbuilt space. We were never able to carry it. I figure that we would make 25 per cent profit from each one of our signs if we had been unmolested on our key locations.

I also stated that under ideal conditions we would have had an annual increase of 31.6 per cent in our gross income up to 1930. If we had made that increase we would have had to increase our plant very rapidly. Our overhead would not have increased very much. I think we could have handled a 31.6 per cent increase each year without increasing our office force very much. We would have had to increase it some. After five years our business would have increased over 150 per cent. That would have increased our office overhead probably five per cent. If we were getting an increase of 31 per cent. each year we would have had to lease new locations and would probably have had to lease locations that we did not build on right away, and we would have had to have a lot of our boards blank to be able to accommodate business as it came to us. In figuring my percentage I figured an overhead of 20 per cent. I did not make any allowance for increased over-

(Testimony of Charles H. King)

head and increased rental expenses due to the increased business. I figured the profits that I talked about coming to us under a condition where we had no unfair competition whatever. We have never operated under fair conditions. I don't know of any other advertising company in the country, whether belonging to what I call the trust or otherwise, that has made 20 per cent on their gross business at any time. I haven't paid any attention to what other people have done. I know what I could do. We have made 25 per cent on lots of our contracts.

BY THE COURT:

We have made 25 per cent and more on individual business that we have handled for our clients. I could point out specific locations where we did that.

BY MR. STERRY:

I couldn't say what the highest net profit is that we ever made on our whole business during any one year. I would have to refer to the books for that. I did not consider that if conditions were ideal and there was no unfair competition so that we could just go ahead and make 20 to 25 per cent, that a great many other independent companies would have also come into the field. Assuming that Foster & Kleiser Company had not unfairly competed with us or if they had been eliminated entirely and had just walked out of California and left Oakland to us alone, that would be a Utopia. Assuming those facts, a great many other people could come into the field and make 25 per cent.

(Testimony of Charles H. King)

I am not prepared to say how many. I think our loss of profits was due both to our inability to get the national advertising and the inability of our plant to give the proper showings. Foster & Kleiser are responsible for both. We were unable to attract national advertising because we had nothing but odds and ends to sell. We have never been able to get together a full quarter showing or half showing. We were lucky to have any kind of a showing. It is not a fact that on or about June 7, 1929 Mr. Westbrook and I called upon Mr. Harris, a local representative of the American Tobacco in Oakland and emphatically pointed out to him that the independent advertising concerns on the Pacific Coast had far better advertisements than Foster & Kleiser. I don't think that is a fact at all.

This copy of a letter in my file from Mr. D. G. Westbrook to H. J. Mahin, dated June 8, 1929, is a copy of a letter to Mr. Mahin which Mr. Westbrook sent to me. Mr. Mahin was our agent in New York. It is dated June 8, 1929 and reads in part as follows:

"Yesterday, accompanied by Mr. King, Manager of the Special Site Sign Company of Oakland, California, call was made upon Mr. Tom Harris Pacific Coast Manager of the American Tobacco Company. A rather lengthy solicitation was made and it was pointed out to Mr. Harris that the independent outdoor advertisers on the Pacific Coast were in a position to give them a better poster service than they are now receiving from the Foster & Kleiser Company and other companies in certain large coast cities.

* * * * * * * * *

(Testimony of Charles H. King)

"OAKLAND. We offer the Oakland plant at the same price; a quarter showing is 8 illuminated and 8 unilluminated. If the advertiser should want to vary the number of panels in each city, he can do so. If he would rather have more illuminated panels and fewer unilluminated or vice versa, it can be arranged."

Witness continuing: That does not refresh my recollection about the conversation which Mr. Westbrook and I had with Mr. Harris. The first paragraph of that letter refers to "better service", it doesn't say better showings. Service consists of upkeep on the board and the type of board and so on. Our boards were more individual and higher from the ground, and such things as that.

Q Well, but, Mr. King, you would not have a better service if, altogether, you had a poorer showing, would you?

A That is the sales talk by Mr. Westbrook there, and that is Mr. Westbrook's opinion. He would naturally put his best foot forward in his sales talk.

Q I am asking you a question, please answer it yes or no. You would not give better service to an advertiser if you gave a poorer showing, would you?

A Well, that is a question.

Witness continuing: I still say that we had never been able to get together a complete showing or a half showing or a quarter showing.

Mr. M. F. Reddington solicited business for independent companies. I sent this letter in the file, dated December 5, 1930, which reads as follows:

(Testimony of Charles H. King)

"F. M. Reddington, Inc.,
Fuller Building,
57th Street at Madison Avenue,
New York.

Dear Sir:

"In anticipation of a continuance of the Camel business, we rounded out our poster plant so that we can now give the best full showing of posters that was ever displayed in Oakland.

"We are enclosing a spotted map and list of locations which will enable you to visualize our display. All of our panels are on main streets entering Oakland, and a large portion of them are downtown locations. They are 75 per cent individual panels.

"Our price is $35 for illuminated panels and $7.80 for unilluminated panels, which we will sell on a basis of one third illuminated and two-thirds regular. This makes our average price $16.87 per panel.

"We appreciate the business we have received from your agency in the past year, and trust that you will be able to place some of your other accounts on our plant in the near future.

"Very sincerely yours,

"SPECIAL SITE SIGN COMPANY
"BY General Manager."

(Testimony of Charles H. King)

Witness continuing: I do not want to change my testimony about having a full showing or half showing. When I told him that we had the best full showing in Oakland that was for him to decide. He came out and checked it. There is nothing in this letter stating that he was to decide whether it was a full showing or not. That was a sales talk, that is all I have got to say for that. It was more or less true. It was true enough so that I sold it to him. We had the Camels one year. I believe the interference of Foster & Kleiser had something to do with losing it because the combine put Reddington out of business. Foster & Kleiser interfered with our Camel showing and that was one of the causes of our losing it, no doubt. I think it was that and the fact that Reddington went out of business which was responsible for the loss of the business. I really think that those two factors lost the Camel business for us. I don't know that it is a fact that due to the depression they asked us to make some changes that we were unable to meet and that Reddington thereupon placed the business somewhere else. We made some concessions.

I received this wire on November 1, 1930 from M. F. Reddington:

(Testimony of Charles H. King)

"SPECIAL SITE SIGN COMPANY
"32 and LOUISE, OAKLAND, CALIFORNIA.

"DUE TO CHANGED ECONOMICAL CONDITIONS IN BUSINESS THE R. J. REYNOLDS TOBACCO COMPANY HAVE BEEN ABLE TO BUY COMMODITIES AT A LOWER RATE AND THEIR POSITION IN REGARD TO OUTDOOR ADVERTISING FOR NEXT YEAR IS AS FOLLOWS STOP THEY ADVISE US THAT THE ONLY WAY THEY WILL CONSIDER ANY FURTHER POSTER ADVERTISING IS ON THE FOLLOWING BASIS STOP ALL TOWNS OF UNDER THREE THOUSAND POPULATION ARE TO BE DISCONTINUED STOP THEY WOULD BE WILLING TO EXTEND THEIR PRESENT CONTRACT FOR A FURTHER TWELVE CONSECUTIVE MONTHS IN ALL OF THE TOWNS IN WHICH THEY ARE NOW POSTING WITH YOU WITH A POPULATION OF THREE THOUSAND AND OVER PROVIDED THEY SECURE A FIVE PER CENT DISCOUNT FROM ALL PLANT OWNERS FOR THIS TWELVE MONTHS CONTRACT STOP THEY WILL NOT POST AT ALL UNLESS THEY RECEIVE ONE HUNDRED PER CENT ACCEPTANCE OF ALL THE PLANT OWNERS TO THIS PROPOSITION STOP THIS CONTRACT WOULD CARRY THE USUAL NINETY DAY CANCELLATION CLAUSE WITH THE UNDERSTANDING THAT IN THE EVENT OF CANCELLATION THIS FIVE PER CENT DISCOUNT WOULD BE REFUNDED TO YOU STOP TO

(Testimony of Charles H. King)

HAVE POSTERS READY FOR JANUARY THERE IS NOT ONE MINUTE TO SPARE THEREFORE WE MUST HAVE A DEFINITE DECISION FROM YOU THIS DAY BY WIRE.

M. F. REDDINGTON, INC."

Witness continuing: We made the concession. I will look through the file and produce an answer to that wire. I received this letter dated November 10, 1930 from M. F. Reddington, Inc. which reads as follows:

"Special Site Sign Company,
Oakland, California.

Gentlemen:

"This will acknowledge receipt of your reply to our night letter of October 31st.

"We regret very much that you were not able to see your way clear to accept the conditions mentioned in our wire regarding the extension of the R. J. Reynolds Tobacco Company contract.

"In view of the fact that we were unable to secure 100 per cent acceptance of the proposition as outlined in our telegram, we are compelled to advise you that the R. J. Reynolds Tobacco Company Will not place a 12-months' contract for next year.

"Yours very truly,

"M. F. REDDINGTON, President."

(Testimony of Charles H. King)

Witness continuing: We did accept it and we did make the concession. I don't understand that paragraph in the letter, "We regret very much that you were not able to see your way clear to accept the conditions mentioned in our wire." but I think I can produce our letter showing we made the concession.

With reference to the letter of December 5, 1930 which you have already read, in which I point out that we have rounded out our showing, we can call anything a showing.

Even in view of the fact that the letter from Reddington dated November 10, 1930 tells us that their contract is going to be cancelled, it is still my opinion that it was Foster & Kleiser's interference with our boards and Reddington's going out of business that caused us to lose that contract.

We received this letter dated January 24, 1931 from the Reddington agency, signed by R. C. Grahl:

"Dear Mr. King:

"We have an advertiser who is interested in a half showing in Oakland for three months commencing May 1, 1931.

"We would like to know whether or not you have a showing available, chiefly the locations formerly used for Camel.

"In one of your letters to us last year you stated that your allotment would necessarily be on the basis of 60 per cent regulars and 40 per cent illumination. An allotment of that type would be satisfactory.

(Testimony of Charles H. King)

"If you are in a position to take care of a contract of that nature, please advise us immediately by wire, and submit to us in writing by air mail, a list of the locations which you would use on this 40 per cent-60 per cent basis. Also, let us know what assurance you can give us in the matter of service.

Yours very truly,

"R. C. GRAHL."

Witness continuing: Mr. Grahl was the checker for the Reddington Company. By a half showing I think he meant what we considered a half showing. We considered a half showing as what we had. I told Mr. Clark that a full showing was 72 and a half showing was 36, but a plant owner can call anything a showing. We don't have to abide by Foster & Kleiser's determination of what is meant by a half showing. I think he meant whatever he said in the letter there. I don't remember my reply to that last letter without having it shown to me. I sent this telegram dated January 26, 1931, which reads as follows:

"OAKLAND, CALIFORNIA, JANUARY 26, 1931.
"MR. R. C. GRAHL.

"CAN FURNISH EXCELLENT HALF SHOWING OF THIRTY-SIX PANELS IN OAKLAND FOR THREE MONTHS COMMENCING MAY FIRST ON SIXTY FORTY BASIS AS PER YOUR LETTER OF THE TWENTY-FOURTH. LIST AND LETTER GOING FORWARD AIR MAIL. THANKS FOR INQUIRY.

"SPECIAL SITE SIGN COMPANY."

(Testimony of Charles H. King)

Witness continuing: That was my opinion of the thing, but nevertheless we did not have what an expert would call a half, quarter or full showing. I have told Mr. Clark that a full showing for Oakland was 72, 36 and 18. That is not the only factor that enters into it, it is the streets they are on.

THE COURT: Q Mr. King, for my exclusive benefit, and I have no doubt everyone else in the court room knows it, and I have no doubt that heretofore it has been explained, but I do not now remember it. Tell me what you mean by a full showing and half showing and a quarter showing. What do you mean by it?

A Well, a full showing, your Honor, is a certain number of posters, and those posters have to appear on all of the main arteries of the city. A full showing would be a more intensive showing than a half showing, and a half showing would be more intensive than a quarter showing.

Q Let me interrupt you at this point, you said a certain number. Does it mean any specific number.

A Not necessarily.

Q Going back to the full showing.

A It does not necessarily mean a specific number.

Q Is the question of whether or not it is a full showing affected by a proportion of what you might call minor sites or major sites, of what you call lesser value and greater value? I mean by that that you have a valuable site and it is on a main thoroughfare.

A Yes, sir.

Q And you have a site in a more retired neighborhood, we will say?

A Yes, sir.

(Testimony of Charles H. King)

Q Now, is the question as to whether it is a full showing or not affected by any proportion between the one kind or the other? That is the good sites and the less desirable sites?

A Well, there has to be a fair distribution. A full showing for instance might have four posters on a main artery, and four on a secondary artery.

Q Well, all right. But that does, to a certain extent, affect the question as to whether or not it is a full showing?

A Oh, yes. Any full showing, real showing of posters has to be, has to include these main arterials.

Q Would there be any difference between a full showing by you and full showing by Foster & Kleiser who, as I suppose, has a greater number of sites than you have?

A Yes, there could be. Our full showing I believe is 72 and their's are, I believe, 72. But it does not necessarily have to be the same. We could claim that a lesser number is a full showing.

Q The difference between the full showing and half showing is made up by the difference in the number of locations where you show the sign, is that correct?

A That is right. A full showing, half showing and quarter showing all cover the same streets or thoroughfares, but it is a matter of intensity. A full showing might have four posters on the main arteries, and a half showing two, and a quarter showing one.

Q Would a full showing in Oakland, as defined by Foster & Kleiser, have any reference to what they did in a district like San Francisco or Los Angeles?

A No, I don't think so.

(Testimony of Charles H. King)

Q It would be confined to that particular locality of Oakland?

A Yes, sir.

Q The territorial limits of the city?

A That is right.

THE COURT: I don't like to interrupt you, Mr. Sterry, but that was for my personal benefit.

BY MR. STERRY:

Mr. Grahl, in his letter of January 24, 1931 asking us if we had a half showing, probably meant a half showing such as Foster & Kleiser Company could deliver but in my reply stating that we could furnish an excellent half showing, I meant a half showing such as we could deliver. I understood when I got his letter that he was asking for a half showing comparable to Foster & Kleiser's. I imagine that is what he meant. I knew that our half showing was not comparable to Foster & Kleiser's.

Q Then you intended to deliberately deceive him, did you, when you wired back "We can furnish excellent half showing of 36 panels in Oakland for three months commencing May 31st"?

A I would not say that was excellent from my point of view, it was the best I had.

Witness continuing: I did not know that he was inquiring about something else. I suspected it. I would not say that all of our locations were key locations. I am not applying the formula to all locations. It could be applied to all as the formula adjusts itself as the income varies. All of these 60 odd locations that Foster &

(Testimony of Charles H. King)

Kleiser took away were all key locations. There are a limited number of key locations in a city.

I wrote this letter of January 26, 1931 to Mr. R. C. Grahl, which reads as follows:

"Dear Mr. Grahl:

"We wish to thank you for your letter of the 24th instant and have wired you in reply as follows:

" 'Can furnish excellent half showing of 36 panels in Oakland for three months, commencing May 1st on 60-40 basis as per your letter of the 24th. List and letter going forward air mail. Thanks for inquiry.'

"Enclosed herewith you will find list of locations, also spotted map, which will show the distribution of the panels. The locations prefixed with a star are panels which you selected on your last inspection of our plant on October 4th to replace Foster & Kleiser panels which you did not approve of.

"We would call your attention to the large number of individual locations, also the greater part of the panels are ones used by Camel, as indicated on list. The other panels are new ones built by us to round out the Camel showing and take the place of the Foster & Kleiser panels, and we can assure you, knowing your requirements, these new poster boards are even better than the ones used by Camel.

(Testimony of Charles H. King)

"This will give your advertiser a wonderful coverage in Oakland, and we hope to receive your order.

"Yours very truly,

"SPECIAL SITE SIGN COMPANY

"By ....., General Manager."

"P. S. We guarantee a three-months' showing, with posting monthly, and panels to be kept in excellent condition during term of contract."

Witness continuing: When I wrote that letter I knew that we had only odds and ends and not a full showing or a half showing, but of course you could not expect me to tell him they were not so good. I did not intend to deceive the advertiser. I knew the advertiser was going to check the locations.

I received this letter dated Jan. 31, 1931 signed by R. C. Grahl which reads as follows:

"Recently we made an inquiry regarding space for a half showing for three consecutive months, beginning May 1, 1931.

"We asked you to furnish us with a list of locations which you could offer for those months.

"For your information, the space in question is for the General Cigar Company, Inc.

(Testimony of Charles H. King)

"However, this letter is to advise you that under no circumstances are you to call upon the General Cigar Company offices or their exclusive distributors in your town or territory.

"It appears that some plant owners have done this, and it has caused the General Cigar Company, New York City, much concern. They are considerably disturbed that the plant owners should take it upon themselves to solicit their sales force prior to the time the General Cigar Company had set aside for this matter.

"You will, therefore, please refrain from taking up any subject whatsoever on this posting with the General Cigar Company LOCAL SALES OFFICES until you have further information from us or the General Cigar Company, New York City.

"Any matters pertaining to this inquiry should be handled through us as we have made plans with the General Cigar Company's New York offices to handle the situation properly and any action taken on your part now will be very disturbing to all concerned.

"Kindly acknowledge receipt of this letter.

"R. C. GRAHL."

Witness continuing: In answer to that I sent this letter of February 6, 1931, which reads as follows:

"February 6, 1931.

"Re: General Cigar Company, Inc.

"Mr. R. C. Grahl.

"Dear Mr. Grahl:

"We are in receipt of your letter of the 31st ult. and in reply we wish to assure you of our utmost compliance with your request.

"We would like to call your attention to the fact that we have more than doubled our plant and that we have another half showing available. Trust you will be able to use this also.

"With very best personal regards and looking forward to seeing you again in our city before long, we remain.

"Sincerely yours,

"SPECIAL SITE SIGN COMPANY

"BY ....., General Manager.

Witness continuing: I signed that letter and the checker checked it and he did not believe it because it did not include some of the main arterials that it should have included. When I said we had another half showing I meant that is what we called a half showing. When I testified that we had never gotten together a half showing or quarter showing, I meant just exactly that; that we had not gotten together a showing that an expert would call a full or half or quarter showing. I also testified that it was the policy of our company never to compare our

(Testimony of Charles H. King)

showing with other competitors and just to sell them on their merits. The letters show that we made some comparisons. I signed and sent this letter of March 14, 1931 to Mr. R. C. Grahl which reads as follows:

"Dear Mr. Grahl:

"We would like, if possible, to know definitely whether the half showing for the General Cigar Company, Inc. for three months, beginning May 1, 1931, concerning which you corresponded with us in January, is to be taken on our plant.

"Thanking you for your early advice, we remain,

"Very truly yours,

"SPECIAL SITE SIGN COMPANY

"By ....., General Manager."

And received from Reddington this letter dated March 31, 1931, which reads as follows:

"Gentlemen:

"Replying to your letter of March 14th, we wish to advise that this contract has not been placed as yet.

"The writer has had an opportunity to look over the map which you have spotted and notices that in submitting the locations you have included some panels that are not inside of the city.

"As we are buying the other towns individually, we do not want any Oakland panels to be in Richmond and San Leandro, California.

"What we want is a showing strictly in Oakland, and panels facing into retail outlets. If you have a better

showing that what you have already submitted, please let us hear from you further.

"For instance, illuminated location 32nd and Louise Streets, on Key Route System is not a good panel for a cigar account. A regular there would be all right as that is not a point where cigars can be purchased and it does not make a good illuminated panel for a cigar display.

"If you want to revise your locations and map, please do so at once. We will hold this matter open for a short time.

"Yours very truly,

"R. C. GRAHL."

Witness continuing: My reply to it is dated April 3, 1931 and reads as follows:

"April 3, 1931.

"Mr. R. C. Grahl,
The Reddington Agency, Inc.,
41 East 57th St.,
New York, N. Y.

Dear Mr. Grahl:

"Your letter of the 31st ult., regarding General Cigar Co. Inc. at hand. Since submitting you our list, we have an illuminated panel available on the East side of Broadway, between 19th and 20th Sts., reading toward 14th & Broadway, which is the center of Oakland. This is a beautiful location, being the closest 24-sheet panel to the center of the city. We would be willing to substitute this

(Testimony of Charles H. King)

for the illuminated panel at 32nd & Louise Sts., (#13 on the list). This is an individual panel.

"We note that you do not want us to submit any locations outside of Oakland and you may, therefore, substitute the following for ones outside the City, shown on our list:

* * * * * * * * *

"With the above changes in our list of 1-26-31 all panels will be in the City of Oakland and this will give you the best showing in the City. The panels we offer are 60% individual, all on main thoroughfares and facing into retail outlets.

"Hoping to receive definite advices at an early date, we remain,

"Sincerely,

"SPECIAL SITE SIGN CO.,

"By ..... General Manager."

Witness continuing: When I said that "and this will give you the best showing in the City" I was probably a little enthusiastic about the showing. I can't say that that statement was exactly true. I knew that there were a lot of streets that we should have been on that we weren't on, but I was trying to sell our showing. I can't say it was exactly true, but I think my testimony as to damages is true.

We received this letter of April 7, 1931 from the Reddington Agency signed by Mr. Grahl, which reads as follows:

(Testimony of Charles H. King)

"April 7, 1931

"Special Site Sign Co.
"Attention Mr. King.

"Gentlemen:

"With reference to your letter of April 3rd, regarding the General Cigar Company's campaign for May, June, and July, in Oakland, Calif., we wish to advise that it is impossible to reach a decision from here in the office.

"In taking the matter up with the General Cigar Company's executive office, New York City, they have decided to bring the matter to the attention of Mr. H. A. Jonas, General Cigar Co. Inc., 601 Third Street, San Francisco, Calif. So that Mr. Jonas could appoint someone to make a competitive inspection. No doubt within a very short time this inspection will be made.

"The type of panels desired by the General Cigar Company are panels that will sell cigars for them, such as panels at important street intersections where the panel will show to a cigar store or drug store, points of heavy circulation, pedestrian and otherwise, and various retail business sections where the panels can be seen by cigar purchasers.

"In industrial sections a panel reaching the factory gates is desirable and a high spot panel coming in on each important highway is also desirable.

(Testimony of Charles H. King)

"We give you this advice so that you will not confuse this campaign with a showing such as would apply to an automobile product, as very frequently we have sacrificed long highway shots for panels that face into retail outlets.

"Yours very truly,

"R. C. GRAHL."

I received this letter of April 14, 1931, which is also signed by R. C. Grahl, reading as follows:

"Gentlemen:

"Recently we had some correspondence with you concerning posting for the General Cigar Company, Inc. in Oakland.

"We regret very much that it is necessary to advise you that the advertiser has decided to use the other plant.

"Yours very truly,

"R. C. GRAHL."

After we had been advised that we had lost that advertisement, I wrote Mr. Grahl under date of April 15, 1931 as follows:

"April 15, 1931.

"Dear Mr. Grahl:

"Your letter of the 7th inst., relative to General Cigar Co., Inc., at hand.

"Mr. Solomon, District Sales Manager of the General Cigar Co. was in Oakland last week and checked our

(Testimony of Charles H. King)

showing with the writer. He seemed very well pleased with our display but, of course, did not commit himself.

"We can give them the best display of posting in the East Bay and all of the locations on list submitted you, (with revisions outlined in our letter of April 3rd) are particularly suited for the selling of this product and meet the requirements specified in yours of the 7th inst.

"Trusting we may hear definitely from you at an early date, and thanking you for your consideration, we remain,

"Very truly yours,

"SPECIAL SITE SIGN CO.,

"By ..... General Manager."

Witness continuing: When I made the statement in there "We can give them the best display of posting in the East Bay" I guess I believed it was true. If the salesman does not have any enthusiasm or is not sold on his product he can't get very far. After I knew that the advertising had gone elsewhere, I wrote Mr. Grahl on May 18, 1931 as follows:

"May 18, 1931.

"Dear Mr. Grahl:

"We notice the posting has been done in Oakland for the General Cigar Co. on Foster and Kleiser's plant and we just want to let you know that there is not a panel in the entire display that you would have accepted for the Camel showing.

(Testimony of Charles H. King)

"Mr. Solomon, who checked our plant, seemed to think that parallel panels, even in groups of five and six, were better than our individual right angle panels.

"We trust that at some not far distant date we may have the pleasure of doing business with you again.

"Sincerely yours,

"SPECIAL SITE SIGN CO.,

"By GENERAL MANAGER."

I suppose I believed the statements in that letter to be correct when I wrote it. I also wrote this letter of May 10, 1932 to Mr. M. F. Reddington, which reads as follows:

"Dear Mr. Reddington:

"We understand that Camel is giving up their National Radio program and we hope they will be back on the posters again soon. If so, we will be able to give them even a better showing than they had with us in 1930, and Mr. Grahl can vouch for the showing we gave Camel in Oakland during 1930.

"We sincerely trust we will have the pleasure of doing business wtih the Reddington Agency again before long.

"Very truly yours,

"SPECIAL SITE SIGN CO.,

By ..... General Manager."

I wrote this letter of July 19, 1933 to Mr. Edward J. Wiley, Jr. He was president of some eastern agency. The letter reads in part as follows:

(Testimony of Charles H. King)

"Dear Mr. Wiley:

"We are just in receipt of your Air Mail letter of the July 19th, and we are more than pleased to note the many good contacts you have had with Mr. Hill of the William Esty Agency.

"In regard to the coverage for Oakland will say 36 panels (18 illuminated and 18 regular) would be required for Oakland alone to give a good showing. This is a half showing for Oakland.

"Previously, when we had the Camel posting, our contract covered Oakland only, and Foster & Kleiser Co. had the business in the small towns. Therefore, we have not fully built the small towns, but we have good locations under lease and, on thirty days notice, would build enough additional panels to give complete coverage in the small towns as listed below. . . ."

Witness continuing: When I said that we never carried any unbuilt locations, I understood that to mean entirely unbuilt. We have locations that are not entirely developed. There are unbuilt sites on some of our locations we have under lease. I have read my testimony to the effect that if we had been allowed to complete our showings or half showings or quarter showings, we would have been able to make our schedule of costs or prices and that we varied from that schedule price because we were driven to sell broken showings and that we have never got a full showing together or any fractional part thereof throughout the entire time in the past in which I have been in the advertising business and that I never offered a full quarter showing to an advertiser or a full showing or a full half

showing. I state that that testimony is exactly right and I have no explanation to offer in view of this correspondence which I have just read.

I reconcile the statements that we never offered a full half showing or a quarter showing or a full showing to an advertiser because those letters refer to what we called half showings and quarter showings, but not what an expert in the business probably would call a quarter, half or full showing. I was making an effort to create interest. I knew these sites were to be checked by the purchaser.

Q All right. Now, did you think that it would help you to get business to make representations as to what you could offer that, on a check, would show were not true? Was that your idea of the way you could get business?

THE COURT: I do not think that is a relevant or material part of his cross-examination; that is, I do not think it is so related to the subject that it need be pursued further. The witness has explained his position with respect to those letters, I think, sufficiently.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 201.

Witness continuing: That letter to Mr. Edward J. Wiley dated July 19, 1933 was in answer to this letter from Mr. Wiley which reads as follows:

(Testimony of Charles H. King)

"July 19, 1933

"Mr. Charles H. King.

"I have just had a long talk with Mr. Hill of the William Esty Agency who handles the Camel account.

"We were discussing the coverage of Oakland. He did not seem sure that it was possible for 36 panels to cover Alameda, Berkeley, and San Leandro and other small towns, as Oakland has a population of 293,000 and the three other towns have a total population of 281,000.

"It may be possible that the information you supplied me with is not complete, but in my setup I have 18 regulars and 18 specials which includes the towns mentioned above.

"Please let me know if I am mistaken. If not, I have a map, which includes all of your towns, spotted to show the distribution of these 36 panels.

"You know Foster & Kleiser set up these towns as individual markets with a poster showing to cover each.

"We would appreciate your reply by return air-mail.

"Very truly yours,

"POSTER PLANT REPRESENTATIVES, INC.

"E. J. WILEY, JR.,

"President."

(Testimony of Charles H. King)

On June 8, 1933 I again wrote Mr. Wiley as follows:

"June 8, 1933.

"Mr. Edward J. Wiley, Jr., President,
"Poster Plant Representatives, Inc.,
"500 Fifth Avenue,
"New York, N. Y.

"Dear Mr. Wiley:

"In 1930 the Independent plants on this Coast had the Camel posting, our contracts being from the R. J. Reynolds Tobacco Co., thru the M. F. Reddington Agency.

"In 1931 and 1932 Camel was not on the posters and in the meantime the Reddington Agency went out of business.

"As Camel is now using posting again, which is at present, on the opposition plant, we thought it best to call this to your attention as it may be possible for you to get the account.

"The Independents gave Camel a wonderful showing and we can now offer them a better showing, by far, than they have on the opposition plant.

"We had a special arrangement with them whereby we furnished only 25% illumination and 75% regular, the prices being $36.00 and $7.80 respectively. On account of the small percentage of illumination, the net price to us was very low and it may be possible to secure the business on a little more attractive basis, and still save them money.

"Very sincerely yours,
"SPECIAL SITE SIGN CO.,
"By GENERAL MANAGER."

(Testimony of Charles H. King)

Witness continuing: I believed the statements in there to be true including the statement, "The Independents gave Camel a wonderful showing and we can now offer them a better showing, by far, than they have on the opposition plant." I again wrote Mr. Wiley under date of August 1, 1933 as follows:

"Dear Mr. Wiley:

"We are very pleased to have received a letter from the New York office of William Esty Company, dated July 26, 1933, copy of which letter we are enclosing herewith for your information. We will get in touch with Mr. Combs, Friday, and will advise you further as to the outcome.

"We recently painted some walls for Schlitz Malt, said walls being selected and contract let through their Pacific Coast representative, Mr. F. G. E. Lange. We notice that they are now using 24-sheet posting on the Foster & Kleiser Company plant. There is, undoubtedly, an agency handling this account but we do not know for sure who it is. Our last Standard advertising register, which is the April, 1930, copy, shows the agency to be Freeze-Vogel-Crawford, Inc., 441 Broadway, Milwaukee, Wisconsin. You may have later information than this and it has occurred to us that you might be able to contact the agency through your connections better than we can from here. We would be able to give them posting for a wonderful display of 10 by 50 highway bulletins throughout Central and Northern California, for anything else in which they may be interested in the outdoor field.

"Yours very truly,

"SPECIAL SITE SIGN COMPANY,

"By ..... General Manager."

(Testimony of Charles H. King)

Witness continuing: At that time I thought the Foster & Kleiser Company were doing the posting for this advertiser. The letter was written with the idea of having our eastern representative contact the agency that was handling it to see if they could get the business for us. I have stated that we were unable to get the prices that we would otherwise have obtained for our posting and bulletins because of the interference of Foster & Kleiser Company. We have tried to get the prices that we thought they ought to be. I wrote this letter of August 16, 1933 to Mr. Wiley, which reads in part as follows:

"Dear Mr. Wiley:

"We were glad to receive your night letter this morning and have replied as per copy of telegram enclosed.

"As stated in our wire, we can deliver this Coca Cola showing on October 1st on 12 months' contract at standard prices of $35 and $7.80 but, on account of our requiring a lower percentage of illumination, by taking our showing Camel will save several thousands of dollars over the 12 months' period. This is the way it will work out."

Witness continuing: That letter is wrong. It should not read "our requiring" but "your requiring". The letter continues:

"This is an actual saving to the advertiser and not a reduction in service as we do not illuminate panels on secondary streets or where the traffic at night is not heavy

enough to justify it. All of our panels are on main thoroughfares and arterial streets, and we only illuminate panels on primary locations."

Witness continuing: I judge we had the Coca Cola account at the time I wrote this letter. I could not recall now what their showing was without looking at the records. They did not have a quarter showing or a half showing or a full showing. They had some kind of a broken showing. I don't remember just what kind. It was posting. The letter continues:

"Besides this great saving, by taking this showing on our plant, Camel will have the advantage of hand-picked panels, 100 per cent new type construction, and 65 per cent individual panels. All of our panels are built high enough above the ground to clear parked and passing automobiles.

"Spotted map of the Coca Cola showing was enclosed in our letter to Mr. Combs on August 11th. This was a traffic flow map and we also showed these de luxe locations on it, except No. 5 and No. 8 on the list enclosed, which can be added to the map if desired.

"The enclosed list of painted bulletin display shows locations desired, including Santa Ana, with prices. We can only deliver five in Oakland, instead of six requested, but these five reach the traffic in every part of the city, being at concentration points. These are available for immediate delivery. We have included location on Broad-

(Testimony of Charles H. King)

way at 20th Street, Oakland, which Mr. Combs was very anxious to get. We quoted it to him at $125 per month on a 12-months' contract but, if taken in conjunction with the other bulletins on enclosed list, we will include it on the same basis at $150 per month. This makes an average price of $77.77 per month per bulletin which is very low for the splendid showing we are offering.

"Regarding the San Francisco territory will say that our suburban bulletin on Bay shore and Industrial Way, South San Francisco, shown as location No. 1 on our list dated August 11th to Mr. Combs, copy of which list we sent to you, is a wonderful buy at $45 per month. It is an incoming reader to San Francisco with an extremely long head-on approach.

"We will send you photos of these de luxe bulletins in tomorrow's air mail.

"Wishing you success in closing this business, and assuring you of our desire to co-operate in every way possible, we remain

"Sincerely yours,

"SPECIAL SITE SIGN COMPANY

"By ..... General Manager.

"P. S. While this is not official, we believe the same proposition on posting could be handled from the independent plants in Seattle, Portland, Spokane, Tacoma. Long Beach and San Diego. S. S. S. Co."

(Testimony of Charles H. King)

Witness continuing: We did not get that contract. The letter offers a showing to our representative in the East. The prices in the letter were the ones that we were offering them at.

I sent this telegram of August 16, 1933 to Mr. Wiley: "Mr. Edward J. Wiley, Jr.,

"Poster Plant Representatives, Inc.,
"500 Fifth Avenue,
"New York, New York.

"Can deliver Coca Cola showing October 1st on 12-months' contract consisting of 36 panels in Oakland, one-third illuminated and small towns as specified in your telegram total 60 panels prices 35 and seven eighty. Can deliver immediately 5 high spot units in Oakland, 2 Berkeley, 1 Alameda, 1 Santa Ana at average price $78 monthly including 20th and Broadway location which Mr. Combs wanted especially. Air mail letter with list and photographs follows.

"SPECIAL SITE SIGN COMPANY."

Witness continuing: 36 panels is what we called a half showing. Foster & Kleiser called a half showing 36, but they were on the main arteries. Foster & Kleiser's half showing was not all on main arteries but it had to include them. We did not include all of the main arteries. I sent this letter of September 1, 1933 to Mr. Wiley:

(Testimony of Charles H. King)

"Dear Mr. Wiley:

"If you want us to check the Camel showing which they now have in Oakland and indicate the panels they now have on a map in comparison with the panels we will give them, we will be delighted to do so. It has just occurred to us that this may be of great assistance to you and will enable the agency to analyze and see the superiority of our showing. Please let us know if you would like this kind of a check for the William Esty agency.

"We are sure if they ask the Bureau to make a check of our plant, they will receive a biased report.

"Beside furnishing this comparative check of the two showings, we will be glad to make an actual check with the Camel cigarette representative in this territory if that could be arranged.

"We are having inquiries for our available half showing and we are being urged to state whether or not we can deliver this showing to another company. We have been holding off now for a few days in giving our answer, so we hope to hear from you very shortly as to whether or not Camel is going to close on the posting.

"Very sincerely yours,

"SPECIAL SITE SIGN COMPANY

"BY ...., General Manager."

(Testimony of Charles H. King)

Witness continuing: My formula could be applied to a location that was not a key location. The first step in applying that formula is to take what the site would bring if developed and multiply that by 72 months and divide that by four and add one-third.

Q BY THE COURT: What did you say to do with four?

A You take the gross income from the site, and multiply it by 72.

Q That is the gross monthly income?

A Yes. Multiply that by 72 months.

Q Yes.

A And then divided that by 4, which would be 25 per cent of that amount, and then you add one-third of that.

THE COURT: I see that now.

Witness continuing: In applying the formula I don't take the actual income but the income which I assume we could get if properly developed, if we did not have unlawful interference. After we took that gross income a month and multiplied it by 72 and took 25 per cent of that, and added one-third to that 25 per cent on the assumption that a key location would help to sell our other locations. All locations helped to sell other locations.

Q That third of 25 per cent was an income that you never did get, wasn't it, under any theory?

A As I explained before, that was the value of the location to the plant as a whole. It was business that that board would bring to the plant, that location, and reduction of sales costs, as one sign sells other signs.

(Testimony of Charles H. King)

Witness continuing: It was on the theory that a key location helps to sell other signs that we can't otherwise dispose of. It is not only a key location, but any location. If you took a location on a secondary artery on any street that was not a main artery, I think it would be fair to add my third to that because different advertisers like different locations; the location on a secondary artery might be near some factory that someone might be trying to reach. If I said on my direct examination that I added that third to key locations because they helped to sell other locations that we could not otherwise dispose of, I did not go far enough. I did not state it all. They all helped to sell each other. I testified on cross-examination that by having a good site we increased the value of our other sites and that that is what is meant by valuation to the plant. I testified also that a key site would sweeten up an entire showing of postings and would sell showings on secondary arteries, which, without those key sites, would hardly be saleable at all. I want to modify that testimony. I want to say that the formula can be applied to any location. My testimony, "A key site will sweeten up an entire showing of postings and will sell showings on secondary arteries, which, without these key sites, would not hardly be saleable at all." is not hardly correct. If we had a location that was not very valuable or something that was not even a secondary artery, and we lost that location, I would still apply the same formula to it. We don't have sites that are worthless. In making that statement that a key location would sweeten up an entire showing and help sell sites that were hardly saleable, by hardly saleable I meant less saleable than key locations. In making this formula I did not take into consideration at all the

(Testimony of Charles H. King)

rent that we would have to pay for those sites. The rent has nothing whatever to do with it. Assuming we had two separate and distinct locations from each of which we got $100 a month, and that for one of those locations I paid $50 a month rent and for the other I paid $10 a month rent, the loss of those two locations would be equally damaging; that is, if the site would develop up to the same. It all depends on how it could be developed. If we had two sites from which I assumed I could get $100 a month income each and for one of those sites I paid $50 a month rent and for the other I paid $10 a month rent, I think that the formula would apply equally to those two sites. The site on which I got a net over my rent of $50 a month could be equally as valuable as the site on which we got $90 a month net. That is taken care of by averages.

All that we put on the Segin property was a 4 by 6, what we call a target. I testified that the reason that we did not put anything more on was because of Foster & Kleiser's interference, which did not justify us in developing it. We got a very small income from a little target but you can't get anything from an individual poster. It would not pay to build one poster there unless we could complete at least a quarter showing. It is not my testimony that between the dates of September 3, 1925 and November 20, 1929 that we did not have even a quarter showing. We had what we called quarter showings but we were not on main thoroughfares.

The Segin property was on San Pablo Avenue. I have stated that that was one of the most important advertising streets in the town. We didn't put a 24-sheet on this

(Testimony of Charles H. King)

street because the showings we had were complete as we called them, but not as an expert would qualify. And we were endeavoring to build up an additional quarter showing. San Pablo was one of the very best streets in the city but the addition of a board there would not have helped out any quarter showing or any showing that we had. We were covered on San Pablo Avenue; I mean that for each of our quarter showings or half showings, we had a 24-sheet on San Pablo. We don't call those 4 by 6's targets. We call them painted boards. As an expert in the outdoor advertising business I never heard that that type of small board was very objectionable to the outdoor advertising business and brought it in disrepute. Foster & Kleser say so but I never heard it from any other source. I would not be surprised to find out that it is one of the policies of the Bureau that they will never permit anyone to advertise on that size of board because the independent companies were the only ones that carried that kind of board. I realized that I could not get posters from the inception of the business in 1916. I believed that was true because of some combination that Foster & Kleiser had with the concerns that got out these posters. There were many discussions between Mr. LaFon and Mr. Stevens and myself about that. I can't recall the dates.

My partner Potter sold his half interest in the business to Foster & Kleiser. I would not say that on the books of the company my brother and I stood as sole owners of the stock with the legal right to vote it. The certificates were signed as trustees, but they were endorsed on the back and delivered to Foster & Kleiser Company. They

(Testimony of Charles H. King)

were delivered to Mr. Lausen. We were holding no certificates. Our books showed me to be the owner of 24 shares personally and as the owner by trust of 12 shares, and my brother the same. The stock books and record books of the company did not say for whom we were trustees. I guess my brother and I have always voted the stock. We never consulted Foster & Kleiser or either Mr. Foster or Mr. Kleiser about voting it. We never were requested to do that. When we took the legal steps necessary to increase the amount of our stock, we did not consult either Mr. Kleiser or Mr. Foster about it. I did not think it was necessary because Foster & Kleiser had threatened to ruin our business, and they had come into our offices through this stock ownership and took off a list of our contracts and expirations and a list of our locations with expirations and used them against us. I thought that any means I could take to get rid of them was right. It is true that my brother and I voted all the stock which we held individually in our own names and as trustees for Foster & Kleiser, without notice to them, to increase the capital stock of our company. I think Foster & Kleiser purchased the stock in March, 1920, and the additional stock was issued in about December of the same year. I don't know how long after that it was that I informed Foster & Kleiser of this increase. I don't think it was more than a year but I can't recall. It was not the fact that I disclosed that to them that broke up the meetings between myself and Mr. Thompson. I believe the meetings started after that. I purchased all of the new stock that was issued, 24 shares. I believe I paid $2400 par value. I knew that Foster & Kleiser had pur-

(Testimony of Charles H. King)

chased the half interest of Potter for $7500. It is absolutely not a fact that the stock was purchased individually by Mr. George Kleiser and Mr. Foster. It was purchased by the Foster & Kleiser Company. When I went to see Mr. Lausen about it, no one went with me. When I first saw Mr. Lausen, I also saw Mr. Kleiser. Afterwards I took my brother, Joe King, with me. He was there at the time they made the purchase. Before that I believe I had made only one visit. It is not a fact that Mr. Kleiser told me in substance or effect that they were not interested especially in acquiring any interest in the company; that Mr. Potter was very anxious to get out of it; that he and I could not get along together; and that they were willing to buy Potter out and they would also buy me out and take over our sites and contracts; and that my brother said that that was not desirable; that they wanted me to have this business to run; and that he expressed the general feeling or fear that if they got Mr. Potter's interest that they would dominate the company and I would lose control of it. Nothing like that occurred. The idea was that Potter had gone over there and offered to sell his half interest and said that he could turn over the best accounts because he had sold them himself; and Lausen said they intended to buy and wanted to know if I would sell at the same price. I said, "No." It is not a fact that Mr. Kleiser asked me why I did not buy Potter and that either I or my brother said that we could not, that we did not have the money, and that Mr. Kleiser said that they would loan us the money and I said we didn't want to be obligated, and that they said, "All right, we will give you the money and you can hold it in trust to assure you that you

are going to be in control and domination of this company." That is absolutely absurd. There was no such talk at all. It was afterward agreed, on Kleiser's proposal, that we should have the stock issued in trust and I delivered it to Mr. Lausen at the hotel. Nothing was said at that conversation about their business. Mr. Kleiser did not say that they were not interested in the business that we were doing or that we were catering to a class of trade that either could not or would not pay their prices nor did my brother say that they would have to come in for them to be interested; or that they could build them a secondary company to take care of the business that could not do business with them. There was no such conversation. It was probably two weeks after that that I delivered the stock to Mr. Lausen. At that conversation Mr. Lausen said something to this effect, as I handed him the stock, "Something has to be done about that location on the Hamlin Ranch. We are going to have that if it costs us $10,000. I want to warn you, King, we are out to get you." I told him he would not get the Special Site Sign Company and then he enumerated on his fingers different companies that they had put out, to assure me that they would get me. I thought at the time that he was joking but it developed that he was not. Between that time and the time we bought the stock we found that out, and that was the reason for buying the additional stock. We saw we were tied up with a bad lot and they were going to put us out of business and something had to be done and done quickly, and we did it some time in December of that same year.

(Testimony of Charles H. King)

Mr. Kleiser made the suggestion to me that the weekly luncheons with Thompson some time after they had blocked us on what we call the Denevi site on Foothill Boulevard, and about the time they knocked us off the Ray Taylor site on Sloat Boulevard, and they were working on the Hamlin site and Cowell Lime & Cement and Arata. At that time I certainly got an idea that Mr. Lausen was not joking. Notwithstanding that, I then had my weekly meetings with Thompson for some months. The meetings were friendly. I had nothing against Mr. Thompson. It developed that Mr. Thompson wanted me to enter into some kind of conspiracy with Foster & Kleiser to go out into these small towns and crush independent plants before they could get a foothold. He told me that that was the purpose of the meetings, at the end of these meetings. Before that time, Mr. Thompson wanted me to get the stock back on the original basis so that they would own half and I would own half. I don't recall that there was a general discussion about the character of our advertising and boards and that sort of thing. Those are the high points of the discussion. The others did not amount to anything. It would be impossible to enumerate all the subject matters which were discussed. I don't recall anything outside of what I have testified to. I believe he wanted to know if I had been calling on Brunswick Tire Company. He said that they had been figuring on that contract and some independent was working on it. He wanted to know if it was me and I told him "No."

With reference to Plaintiff's Exhibit 197, without looking at the file, I recall that we had this site on San Pablo

(Testimony of Charles H. King)

Avenue and that it was built out by Foster & Kleiser. I remember I called Thompson on the phone about it and asked him if it was their policy to build out our boards and told him that we didn't build out theirs. He asked me why we didn't, and I asked him if he thought it was right and he said to go ahead and build them out, so I moved our board over in front of theirs and they took their board away. I don't remember now when that occurred. I could find that out from the records. I made no memorandum of that conversation. There might be some notation in the books somewhere but none that I recall now.

I remember that an order was made by this court requiring a bill of particulars as to certain sites. The time for supplying that was extended several times and we filed such a bill. More than a year after our original bill of particulars and a short time before the trial, we filed a supplemental bill and then we filed an amendment to our original bill here at the time of trial. I have been president of this company all along and I knew about all the locations that we had lost and all of these various acts that I have testified about. We didn't include all the locations that are listed in the supplemental bill and the amended bill in the original bill because we didn't have time. There was plenty and plenty we could have put in if we had had more time. I did not know about them at the time, I ran into them since. I said I knew about them every time that they were lost and knew that it was Foster & Kleiser that caused us to lose them, but a man can't carry that in his mind. But I carried this conversation which I had with Mr. Thompson in my mind without

(Testimony of Charles H. King)

a memorandum. I remember testifying on direct examination to conversations with employees and officers of Foster & Kleiser Company. I did not have a memorandum with respect to any of those conversations which I made at the time of the conversation by which I refreshed my memory, but there are contemporary facts and papers and documents that recall those conversations. They were rather high spots in our career.

I testified that I was the one who evolved this formula by which I valued the leaseholds. Mr. Westbrook and I worked together and both arrived at the same conclusions. We worked it out separately. Mr. Westbrook and I discussed it and then we separately arrived at about the same conclusion.

I received this telegram of September 10, 1929 from H. J. Mahin, which reads as follows:

"HAVE PROMINENT NATIONAL ADVERTISER INTERESTED IN USING YOUR PLANT FOR TWELVE MONTHS CONTRACT BEGINNING JANUARY INVOLVING SAME EXPENDITURE AS PAYING AT PRESENT FOR HALF SHOWING WITH YOUR COMPETITOR STOP ADVERTISER WANTS SMALLER PERCENTAGE ILLUMINATED AND MORE REGULAR AND WISHES TO MAKE SELECTION OF LOCATIONS TO FIT CITY AND PRODUCT STOP IMMEDIATE INSPECTION WOULD BE MADE IF YOU OFFER SUCH ARRANGEMENT WIRE PARTICULARS CARE WOODWARD HOTEL NEW YORK CITY I REPRESENT STEVENS OF SEATTLE AND

(Testimony of Charles H. King)

OTHER INDEPENDENTS HERE THIS ORDER WOULD GIVE YOU GREAT PRESTIGE AND BE PRACTICALLY PERMANENT

"H. J. MAHIN."

I do not remember now to what account that referred. I sent this telegram of September 11, 1929 to Mahin in reply. It reads as follows:

"WE ARE READY TO CHECK OUR PLANT WITH THE REPRESENTATIVE OF YOUR NATIONAL ADVERTISER AND CAN FURNISH SERVICE AS OUTLINED IN YOUR TELEGRAM OF SEPTEMBER TENTH.

"SPECIAL SITE SIGN CO."

I remember receiving this letter dated December 16, 1929 from R. C. Grahl of the Reddington Company, which reads as follows:

"Dear Sir:

"Since having returned to New York I have several times gone over the showing selected on your plant for CAMEL CIGARETTES.

"I do not know whether or not you fully appreciate the responsibility taken in selecting your plant. The R. J. Reynolds Tobacco Company have been using another plant in your territory for over fifteen years and the recent decision is one of great concern.

"It is especially a responsibility on my part and I, therefore, felt it a personal matter to write you reminding

(Testimony of Charles H. King)

you that it is now your full duty to back up my judgment to the limit.

"The locations you deliver must be in accordance with the selections made. The showing must start on January 1st. The greatest possible care must be used in the handling of the contract. In fact, the service must be 100% in every respect and no stone left unturned to make the CAMEL a dominating one.

"Within forty-five days I expect to visit your plant for the sole purpose of inspecting the CAMEL display. It is certainly important to me personally and it should be of utmost importance to you, that a clean-cut meritorious report be made at that time. I am counting on you for full cooperation.

"With kindest personal regards, I am

"Sincerely yours,

"R. C. GRAHL."

I think that this refers to the same matter which Mr. Grahl referred to in his telegram of September 10th because the Camel account was all we handled with Grahl. I wrote this letter of December 24, 1929 to Mr. Grahl, which reads as follows:

(Testimony of Charles H. King)

"Mr. R. C. Grahl.

"In response to your letter of the 16th inst., will say we fully realize the responsibility you assumed in selecting our plant, and we are fully conscious of our obligation.

"We wish to assure you that the Camel showing in Oakland will be 100% O. K. in every respect.

"We are looking forward to your visit some time about the first of the year, and we are sure you will be more than pleased.

"The location which was to be built at Fourth Avenue and E. 18th St. has been secured and the site surpasses our fondest hopes.

"All the panels will be complete and ready for posting by December 28th.

"Wishing you the Compliments of the Season, we remain

"Very sincerely yours,

"SPECIAL SITE SIGN CO.,

"BY GENERAL MANAGER."

We did complete our plans on that poster showing. I sent this letter of October 23, 1930 to Mr. Grahl, which reads as follows:

(Testimony of Charles H. King)

"Dear Mr. Grahl:

"Regarding the changes in the Camel display which you ordered as a result of your inspection under date of Oct. 4th, will say that Foster & Kleiser would not give us any of the changes on their plant which you desired. We are, therefore, giving you the substitutions you asked for on our plant, without charge, so you will have a double showing on these panels until Jan. 1st.

"We are securing the finest sites obtainable and will be in position on January 1st to give you Special Site panels to replace all of the panels now used on the Foster & Kleiser plant.

"With kindest personal regards, we remain

"Sincerely yours,

"SPECIAL SITE SIGN CO.,

"BY GENERAL MANAGER."

I would like to explain that. When I contracted with Reddington to put out this Camel display, we didn't have sufficient boards so we cooperated with the Coast Advertising Company, another independent in Oakland. Then Foster & Kleiser bought them out and they were not willing to make the changes that the Reddington Company wanted and I had to make them myself. I did make them.

(Testimony of Charles H. King)

On the same date I sent another letter to Mr. Grahl which reads as follows:

"Dear Mr. Grahl:

"We are preparing a showing of forty 24-sheet poster panels which will far surpass any tobacco display in this City, and which we hope to use for the Camel showing in 1931.

"This showing includes several downtown locations, which, naturally, increases our average space rental. Therefore, it will be necessary if you give us a contract for next year to have it on the basis of 14 illuminated and 26 regular. This figures 35% illumination, and gives us 14 illuminated instead of 10, as at present. We would very much like to have a continuation of this business on this basis.

"Can you let us know at this time if we are to be favored with the Camel contract for 1931?

"Thanking you for an early response, we remain,

"Sincerely yours,

"SPECIAL SITE SIGN CO.,

"BY General Manager."

Witness continuing: Our regular fixed schedule of prices for our posting was based on a complete showing and we never completed what an agency or an advertising man would consider a showing; and we never got those prices. We made different prices according to the contingencies as they arose. If an advertiser agreed to

pay us a certain price for a showing, he could not be at all certain that some one else might not afterwards buy the same showing from us at either a higher or lower price. Under the conditions that we were working, we had to pick out for each advertiser the best of our plant and sell it to him. We made a price to each advertiser as conditions varied. The boards varied also. No two advertisers buy the same kind of a deal. Our schedule of prices is just a little under Foster & Kleiser's because our overhead was less. We did not have any undercover department and we didn't have any public relations department. We were not contacting other people's locations, and so on. I did not carry on the work of a public relations department by trying to keep in contact with the various city councils and city officials where we operated. I never found it necessary to contact those officials unless it was in the regular course of business, securing permits, and etc. I did not testify that I tried to keep in contact with all the various city officials and city councils and the ordinances in all the various cities where we operated. It may be necessary for a person who intends to conduct an outdoor advertising business to keep in touch with the general civic bodies and civic clubs to continually combat the feeling against outdoor advertising, but I can't see the necessity of contacting the council and officials for that purpose. It is a fact that the outdoor advertising business always has had to combat adverse public sentiment. I don't think that that sentiment has been growing gradually less during the years. I think it is probably worse than it ever was.

(Testimony of Charles H. King)

Our prices were not made less than Foster & Kleiser's with the desire to secure business by underbidding them. Our costs of operation were less. I wrote this letter of June 4, 1929 to Mr. Westbrook, which reads as follows:

"June 4, 1929.

"Mr. D. G. Westbrook,
"Russ Building,

"Dear Mr. Westbrook:

We are enclosing herewith list showing four paint bulletins which we have available in Oakland, at prices as shown. List also shows 23 four-sheet poster boards, the price for which is as per enclosed rate card. The enclosed marked map shows the locations of these poster boards.

"You will observe, by studying our rate card, that our commercial rates and amusement rates are both below the F. & K. prices. Also, all of our posters are standard construction.

"Our photographer disappointed us, but we will have pictures for you in a day or two.

"Wishing you every success, we remain

"Yours very truly,

"SPECIAL SITE SIGN CO.,

"BY GENERAL MANAGER."

Witness continuing: We pursued the same policy as Foster & Kleiser as announced in their bulletin by Mr. Thompson to the effect that wherever any advertising was seen being done by other people, it should be reported

so that Foster & Kleiser could contact the advertiser. We contacted everybody we thought was interested. It didn't matter whether they were on the Foster & Kleiser boards or not; they were in the field for regular advertising.

I received this letter of June 10, 1929 from Mr. Westbrook, which reads as follows:

"Attention Mr. King.

"Gentlemen:

"Confirming telephone conversation, we have an inquiry from the Shell Oil Company through the J. Walter Thompson Agency for 27 bulletins located in the following cities: San Diego, Los Angeles, Oakland, San Francisco, Portland, Tacoma, Seattle and Spokane.

"They are interested in four bulletins in Oakland. If you have more than four bulletins, you might send me a description of five or six. Please give me a description for each one; include about a paragraph of sales talk to go along with it and also a photograph, if possible. Mark each photograph so we will know which bulletin it covers. If it is possible for you to contact a Shell representative who is in high enough position so that he can make a recommendation for our service in such a way that it will reach the head office or the Thompson Agency, it would go a long ways toward making this sale.

"It would be wonderful if we could break in on this account, so I am writing to all of the other companies

(Testimony of Charles H. King)
asking them to cooperate so as to help push this thing through.

"Thanking you, I am,

"Yours very truly,

"D. G. Westbrook Co.
"By D. G. Westbrook."

Witness continuing: I don't recall whether I personally made any special effort to take that account away from Foster & Kleiser. I also received this letter of August 15, 1929 from Mr. Westbrook:

"Gentlemen:

"During the past week we made our first contract on the Eastern Outfitting Company who have a large furniture store in San Francisco and also have large stores in the other big cities on the coast. They own the Columbia Outfitting Company. Prior to our call on the Eastern Outfitting Company, the Foster & Kleiser Company have been working with them for a long time, trying to get them to approve a comprehensive outdoor advertising schedule which would be standardized for all of their branches. They have at last succeeded in interesting the management in San Francisco, to the point that they have been permitted to solicit all of the outside city branches direct.

"We suggest that immediately upon receipt of this letter you have your sales representative call upon the Eastern Outfitting Company or the Columbia Outfitting Company, as the case may be. We have an especially good chance

to sell them in Spokane and Foster & Kleiser Company has no plant there. These people should be contacted in Oakland, Seattle, Portland, Tacoma and Los Angeles. I am not sure whether they have a store in San Diego but if they do have it will be well for the Robert Cordtz Company to contact them. This letter is being written to all the members of our association.

"Very truly yours,

"D. G. Westbrook Company,
"By D. G. Westbrook."

I don't recall whether we ever made any effort to obtain that account but I guess our salesmen made an effort to contact them. I don't remember what we did. I don't recall particularly receiving this letter dated November 22, 1929 on the letterhead of D. G. Westbrook Company. The second page of the letter is not in my file and has apparently been lost. The first page reads as follows:

"Gentlemen:

"As you know, we have been contacting McCann Agency for a long time and we have just now received a call from them to furnish them with a proposal outlining the service which we can render the entire length of the Coast.

"Attached is a list of the locations which they are now using together with the prices they are paying. Needless to say, this is confidential information and I do not want

anyone except yourself and Mrs. Montgomery to know that you have it.

"I have written to all the other plant owners to furnish me with their data within the next three days. You will not need to do anything now as I will come over to your office and we will work out your part of the proposal after I have received the data from the others. It might be well for you to refer to the list and get a clear idea of what Borden is using and paying.

"When I get all of the material together I am going to prepare a proposal that will knock the spots off anything our competitor turns into the agency. There is no limit to what we will do to get some business. We surely feel good the way things are now going. I will bet anyone money that within the next 60 days we will secure some account that will knock,"

Witness continuing: Mr. Westbrook was our agent at that time and he was not an advertising agency. He was an independent solicitor. At that time I considered him an expert in the business. He was simply soliciting business from advertisers for myself and other so-called independent companies.

It was thereupon stipulated that the following letter from D. G. Westbrook to C. E. Stevens Company dated March 10, 1930 might be read into the record. Said letter is in words and figures as follows:

(Testimony of Charles H. King)

"March 10, 1930.

"C. E. Stevens Company,
"Post Office Box 463,
"Seattle, Washington.

Attention Mr. Stevens.

"Gentlemen:

"The substance of this letter has already been discussed with Messrs. Cordtz, LaFon and King during the past ten days. It does not seem to me that we are getting a fair break from the agencies. I realize that in a number of cases the agency, out of fairness to its client, places the business with Foster & Kleiser Company, but we have had a number of cases during the past six months where we have actually sold the advertiser out posting and painted bulletin plants, but before the business actually reached us it has been diverted by the agency.

"Most of the cases referred to apply particularly to the C. E. Stevens and LaFon plants, which are better equipped to give service in posting than are the other independent companies. I might add there that this does not apply to the U. S. Sign Company of Spokane, which, due to the fact that they have no competition with Foster & Kleiser, is receiving a fair share of the agency and Bureau business.

"The agencies have met us with fair words, but so far very little business has resulted. As far as San Francisco is concerned we should have had posting from Associated, Shell Oil, Langendorf Bakery, and all of the Jansen posting in Los Angeles, instead of one month.

(Testimony of Charles H. King)

"In most cases it seems to me the business has been deliberately placed with our competitor, and I am not convinced that we had a fair break.

"In discussing this matter with the gentlemen referred to I suggested that a committee of one be appointed by the independent companies to call upon the president and secretary of the Pacific Coast Advertising Agency Association, and quietly and carefully point out to them the facts regarding the agency situation so that the officers of the Association may know by inference that we have reached the point where action must result quickly.

"As I believe the President of the Association has his office in Portland, I suggest that this being true you call upon him there. It would seem a simple matter to point out to him that the independent companies have an investment in their plants, and if these plants are not sold through cooperation with the agencies it is obvious that there will be only one thing left to do, and that is to go to the advertisers direct with prices which will get the business.

"Messrs. LaFon, Cordtz and King endorse this plan. I am sending a copy of this letter to each of them and also to Mr. Lorraine. If this plan seems good to follow, you may use the names of all the other independents mentioned, although I would suggest leaving out Mr. Lorraine, as with the business he is receiving through the Bureau he will probably be better off to continue with the Bureau. As I have not discussed the matter with Mr. Lorraine if he cares to write you his opinion upon receipt of his copy of this letter he can do so.

(Testimony of Charles H. King)

"While our plants are probably pretty well sold, Mr. LaFon has a lot of open space in Los Angeles. He has a good plant and I know that it can be sold direct.

"I do not wish to seem officious, but I have felt that part of my job is to get the independents together on matters of this kind, and I do consider it highly important that the agencies officially be notified of the way we regard this matter. It may be possible to get the President of the Association to send out a circular letter to all of their members, calling their attention to the independent plants and mildly pointing out that it would be well for them to place more business with us.

"Speaking plainly, it looks like our chief competitors have just as close a working arrangement with the Bureau and agencies as ever, and that we are now being two-timed by them. I am enclosing names and addresses of the Associations officers. Will you please write to me how you feel about this matter.

"Very truly yours,

"D. G. Westbrook."

Witness continuing: I went to advertisers directly and tried to sell our business directly to them. I realized that that would almost certainly prevent us from getting any business from the agencies but we had to get business from some place. The agencies would not give it to us, they placed it through the Bureau on Foster & Kleiser's plants. I know that lately the agencies handle most of the large national accounts and that it goes to Foster & Kleiser's plants almost exclusively. The agencies make

their money purely from commissions paid them. We paid them commissions. I knew if we went directly to the advertiser and solicited business directly, we would almost certainly alienate the agencies but they were alienated anyway. That was our reason for it.

I received this copy of the letter written by Mr. Westbrook to the Custo Corporation. That was a corporation that put out some patent food product. They were not an agency. As near as I can recall, at the time this letter was written, there was no agency handling their account. I am not sure of it. The letter reads as follows:

"Attention Mr. Rowan.

"Gentlemen:

"You have requested that we submit prices upon our 3-sheets, in Oakland, Berkely, Alameda, San Leandro and San Francisco.

"While we have a number of 3-sheet structures erected which are not sold at the present time, our system of operating this classification of outdoor advertising is to build them specially for the account sold. This gives the advertiser the advantage of having locations which are ideally situated to best sell his advertising needs. It is a tailor-made method of handling.

"Where we build especially for you, we quote you prices on a one-year contract basis as follows:

"3-sheets with monthly change of copy $3.00 per month each

(Testimony of Charles H. King)

"3-sheets with copy changed each six weeks $2.85 per month each.

"3-sheets with copy changed each two months $2.70 per month each.

"You understand, Mr. Rowan, that we will deliver at the above price, standard structures only. We do not solicit or deliver any advertising on a sniping basis. In the event that any poster which we place becomes torn or defaced, we replace it free of charge, providing you furnish us with the extra posters for the purpose.

"Advertising your product on this medium will bring you good returns, providing that it is placed upon well kept structures and services rendered in a workmanlike manner. This we guarantee to do.

"The companies which we represent as indicated by this letterhead can deliver all classifications of outdoor advertising from Spokane and Seattle to San Diego. We prorate any business we receive according to the plant owner's territory indicated above.

"We have in San Francisco and Oakland, contiguous territory, many fine painted bulletin locations. We have in the northern half of the state 10 by 50 standard highway bulletins built which we can offer you at $19 per month on a one-year's contract. We also have a number of 5 by 12 miniature De Luxe now erected upon a main highway in the northern part of the state between Bakersfield and the Oregon line upon which we can quote you prices of $8 per month each on a one-year contract.

"If later you should be interested in 24-sheet posting, we have very fine plants in Spokane, Seattle, Tacoma,

(Testimony of Charles H. King)

Portland, Oakland, Los Angeles, Santa Ana and Long Beach and San Diego. Over 50 per cent of the posters in these plants are individual. We have practically no parallel panels and in most cases they are built high enough above the ground so as not to be blocked by parked or passing automobiles.

"To give you an idea of the type of accounts which we are serving with this type of outdoor advertising, we wish to point out that we have recently sold the Reynolds Tobacco Company, Associated Oil Company, Philadelphia Storage Battery Company, Frigidaire, Buick, Pontiac, Oakland, Jantzen Knitting Mills and a number of other accounts of equal importance. All of the accounts listed now have posting on our plants.

"If in quoting you prices, terms and conditions on our advertising, some of the details are not just as you want them, please let us know as we do not wish to be considered arbitrary. If you have any particular ideas you would like carried out in the way of placement, copy, distribution or anything else we shall be glad to figure with you at any time.

"Thanking you for the opportunity of presenting this data, we are,

"Very truly yours,

"D. G. WESTBROOK COMPANY."

(Testimony of Charles H. King)

I approved of those prices that were quoted.

If we had a site on which we intended to erect either a de luxe bulletin or a poster panel, which would be a key location, I would consider it advisable to keep that site unimpaired. If there were a number of vacant lots contiguous to that site on which some other advertiser could build a structure and block out the view, I would consider it a very good business move if I could afford to get those other adjoining lots under lease so that they could not interfere with our location. In some instances we did have what we called protection leases, that is, leases to protect the view to our sign, just as we had on Piedemonte, protecting the view to our sign on the Pastoreno site. On that site I should think we had about a 50 foot frontage covered by a protection lease. The amount of frontage necessary for protection would depend entirely upon the location, situation and view of the site that we were building our structure on.

Aside from the question of competition, the value of advertising sites changes from time to time with changing traffic conditions. Not infrequently it happens that a site that is desirable becomes unimportant through some change of traffic conditions, as where highways are moved. It is also true, especially in cities like Oakland and Los Angeles, that traffic is sometimes diverted by a cut-off where new streets are opened up. Leaving out the question of competitive conditions, conditions in the tight and extra tight districts change only very gradually. During the development of the automobile, the value of the tight district or first traffic area has changed very materially.

(Testimony of Charles H. King)

We now refer to billboards as advertising structures as Foster & Kleiser do. The way we build them, they are firmly built with practically no danger of falling over and they are rather attractive. I understand that in the early days of the business some of the most valuable sites were along railroad tracks. There was very little railroad business in my time. It is true that, with the development of the automobile, outlying streets and roads that were of no advertising value at all a decade ago have now become the most valuable.

BY MR. CLARK:

I remember writing this letter, Plaintiff's Exhibit 137-F, to Mrs. O'Neil. She said that the transfer had been made and when we asked where that could be seen, she had her attorney write. I recall that the actual transfer had not been made at the time we wrote that letter but was made subsequent to that. It is my impression now that the deed from Mrs. O'Neil to her daughters was dated subsequent to December 16, 1924. I got that impression from the letters in the file. I don't seem to be able to locate the letter here, but I recall the discrepancy in the time of the transfer. It may be that while the deed was made prior to December 16, 1924, it was not recorded until January, 1925, and I complained because there had been no recordation of it. I don't recall whether we received a letter from Mrs. O'Neil in response to the letter, Plaintiff's Exhibit 137-F. I believe we did receive a letter in response in which Mrs. O'Neil told me of the offense that that letter had given her because we had questioned her good faith. I don't know where that letter is; I thought it was there.

(Testimony of Charles H. King)

REDIRECT EXAMINATION

BY MR. GLENSOR:

I wrote a letter to the Misses O'Neil, Plaintiff's Exhibit 127-G, dated October 6, 1924, calling their attention to the fact that the sale of the premises must be evidenced by the passing of the deed and inquiring where the records of the transfer could be found. Plaintiff's Exhibit 137-H, a letter from Messrs. Snook, Snook & Chase, dated March 14, 1927, states that Mrs. O'Neil sold the property to her daughters by deed dated November 10, 1924. That is the discrepancy in dates that I had in mind.

Our corporation was the incorporation of King & Ashcraft, a pre-existing partnership. At the time we incorporated, we took up the assets of the copartnership. Since that time we put in $2,400, at the time the new issue of stock was sold in December, 1920. We originally issued 24 shares of capital stock each at par, and on top of that there has been $2,400 additional capital invested in the business. The other money in the business, if any, over and above that original capital investment, came from the earnings of the corporation. In keeping our books, we have made no effort to distinguish between capital investment and expense. As we constructed new plants we just charged it up to expense.

With reference to the stock owned by Foster & Kleiser, I levied an assessment and they turned in their stock in lieu of payment of the assessment. They had half of the stock. There were four directors. Before Foster & Kleiser appointed the two directors that they wanted to put in, I bought 24 shares additional which gave us two-thirds ownership.

(Testimony of Charles H. King)

On our balance sheet we carry real estate at 32nd and Louise Street at $7,323.78, as of January 31, 1934. That represents the purchase price of the property. We purchased it at different times and have had it a good many years. The reasonable value of that real estate now is $30,000.

We never received a contract for advertising through or from the National Outdoor Advertising Bureau. We cleared the contract with the Pet Milk account which we ourselves had secured through the Bureau some time in 1929. That was sold by Mr. Westbrook and was sold direct to the advertiser. Nothing was said in regard to any agency, and after the deal was closed, it seemed that there was an agency on the account and it was then routed through the Bureau and 16-2/3 per cent commission deducted from it and paid to the Bureau. We never got any other business from the Bureau.

I referred to the boards on the Hamlin site as a mess. We did not build those boards. They were on there when we got the site. We were not selling them at the value to which the site should have been built up. I was selling it for what we could get for it. We intended to develop the site and remove these old boards. The Hamlin site was instrumental in securing at least two contracts for us. The representative of the Champion Spark Plug Company came to the Coast here. He stated that he had interviewed Foster & Kleiser and that he was not satisfied with the deal he could get from them, and that he got in his machine and drove out on the highway and saw our head-boards on the Hamlin Ranch and he came over to our office in Oakland and closed the deal with us to

handle the account. The Dreadnaught Tire account was handled through Dunham, Corrigan & Hayden, and the party who handled the Dreadnaught account got in touch with me and said he had seen the location on the Hamlin Ranch and wanted to know if we could handle a contract over the northern part of the state for them. I signed a contract with him.

We never did any sniping. In computing the profit of 25 per cent which I estimate we would derive in the operation of our business without interference, I contemplated that there would be times when our signs would be vacant. We do not have our plants full 100 per cent of the time nor does any other outdoor advertiser. Our 20 per cent overhead takes care of vacancies on our plant. The vacant boards are part of our overhead expense. Advertisers' contracts are cancelled from time to time and do not always run their full term. That does not particularly affect the value or use of a location. It is sold to another advertiser. I was unable to state on cross examination when we lost our board on the Swain location. I had in mind the fact that Foster & Kleiser's office record card shows that our board was removed March 18, 1931. On the Giurlami lease dated May 13, 1925, I made a notation, "Lost at expiration May 1, 1930". That should have been May 13, 1930. That indicated the loss of the lease, not the loss of the sign. I recall that our sign remained on the property until the

suspension of the Giurlami contract. Giurlami was the advertiser. That was in the latter part of 1930, and the sign was not lost until March, 1931.

We once had a lease and a sign on the property of Swain.

We had an advertiser on the sign. Without regard to what date the location was lost, we lost the location and the sign and the advertiser. That was on the lower Sacramento Road.

I did not sign any quitclaims similar to those attached to the letter, Plaintiff's Exhibit 131-G, which is dated June 7, 1930. I received this letter, dated June 16, 1930, from Santo Banchero.

MR. CLARK: I am going to object to offering that in evidence on the ground that it is not part of the redirect. That letter should have been introduced as a part of your case in chief, if you wanted it.

THE COURT: Let it be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 202.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 131-J in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 131-J.]

4709 Shafter Avenue,
Oakland, California,
June 16, 1930.

Special Sign Company,
3225 Louise St.,
Oakland, Calif.

Gentlemen:

In as much as you have terminated the contract for the advertising privilege on my property at 60th and Telegraph Avenue, I would like a complete release from you, in order that I may be able to lease the property for any purpose to some one else.

Please send me such a release as soon as possible.

Yours very truly,

Santo Banchero
Santo Banchero

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 131-J Filed 1/9 1935 R. S. Zimmerman. Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: We did not send Banchero a release when we got this letter. Banchero then called on me at the office and he had a release typewritten and he asked me to sign it. That is a copy of it.

I received this letter dated October 10, 1929 from the East Bay Title Company.

MR. CLARK: I object to the introduction of that letter in evidence on the ground that it is irrelevant and not proper redirect examination.

THE COURT: I will confess that I am not clear on it myself. Go ahead and read it.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 203.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 133-K in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exibit No. 133-K.]

[Letterhead of East Bay Title Insurance Company]

[Crest]

EAST BAY TITLE INSURANCE COMPANY

1430 Franklin Street
Oakland, California

October 10th, 1929

Special Site Sign Company
3225 Louise
Oakland, California

Gentlemen:

We are writing on behalf of Dr. William P. Milliken, the owner of premises known as #1318 East 12th Street, Oakland.

We have made repeated requests by phone to have you remove the sign from the above property, which sign is at present improperly placed upon the premises. Your rights under a former purported lease have expired. Your failure to remove the said sign therefore compels us to demand that this sign be removed within three days, or we will have it removed and all expenses incurred together with damages will be demanded of your company.

Very truly yours,
EAST BAY TITLE INSURANCE CO.
By Wm. J. Kane

WJK:hb
Recd 10 AM 10/12/29

(Testimony of Charles H. King)

(over)

[On Envelope Attached.]

East Bay Title Insurance Co.
1430 Franklin Street
Oakland, California

Registered No. 62311

[Postmark] Oakland (16th St. Sta) Calif. Oct 11-1929

Special Site Sign Company
3225 Louise
Oakland, California

Return Receipt Requested
Fee Paid

No. 5673-C. Special Site Sign vs. Foster & Kleiser Plf Exhibit No. 133-K Filed 1/9 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Thursday, January 10, 1935

Witness continuing: If I testified on cross examination that we had increased the capitalization of the company, I made a mistake. When we issued the additional 24 shares of stock we just sold treasury stock. We applied to the Commissioner of Corporations for a permit to sell 24 additional shares to stockholders. Those were the proceedings I had in mind when I stated that we had increased the capitalization. This is the permit issued by the Commissioner of Corporations which I had in mind. It reads as follows:

(Testimony of Charles H. King)

"STATE CORPORATION DEPARTMENT
OF THE
STATE OF CALIFORNIA

"IN THE MATTER OF THE APPLICATION OF SPECIAL SITE SIGN CO.	) SUPPLEMENTAL PERMIT
For a certificate authorizing it to sell its securities.	)

Herman Weinberger,
Attorney for Applicant.

"Pursuant to its application, SPECIAL SITE SIGN CO., a California corporation, is permitted to sell and issue 24 shares of its capital stock to its present stockholders of record at par for cash, lawful money of the United States, for the uses and purposes recited in said application, so as to net the applicant the full amount of the selling price thereof.

"THE ISSUANCE OF THIS CERTIFICATE IS PERMISSIVE ONLY AND DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF SAID SECURITIES.

Dated: San Francisco, California, December 6, 1920.

"E C BELLOWS
Commissioner of Corporations
BY A. G. FICKEISEN
Chief Deputy."

(Testimony of Charles H. King)

Witness continuing: I have in mind the distinction between increasing the capitalization of a corporation and securing a permit to issue stock that is already authorized by its articles of incorporation. The certificates which I delivered to Mr. Lausen at the Palace Hotel were issued to my brother and myself as trustees. We endorsed them on the back and delivered them to Mr. Lausen. The stock stood in that condition until 1930. The brother and I wrote a joint letter to terminate our trusteeship. This is a copy of the letter which we wrote. The original was mailed to Foster & Kleiser.

The letter referred to by the witness was thereupon marked Plaintiff's Exhibit 202 for Identification.

Mr. Glensor thereupon offered in evidence a letter dated January 20, 1932, addressed to Special Site Sign Company, signed by Herbert W. Clark.

MR. CLARK: Yes. I think that is wholly immaterial and hasn't any place here in redirect at all. I will admit that I wrote the letter but it is wholly immaterial.

THE COURT: Let it be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 204.

Said letter was thereupon received in evidence and marked Plaintiff's Exhibit 203 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 203.]

Law Offices of
MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK

A. F. Morrison
(1881-1921)
Herbert W. Clark
Roland C. Foerster
Edward Hohfeld
J. F. Shuman
Leon F. de Fremery
Forrest A. Cobb

Crocker
Building
San Francisco

C. Coolidge Kreis
W. T. Fitzgerald
Wm. L. Holloway
Francis C. Hutchens
Garrett H. Elmore
Noel A. Troy
Emory L. Morris
J. Hart Clinton
Boice Gross

January 20, 1932.

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

Herewith find certificates numbered 10 and 11, the first in the name of Charles H. King, Jr., Trustee, endorsed by him, and the second in the name of J. H. King, Trustee, endorsed by him, evidencing the ownership of twenty-four (24) shares of stock of Special Site Sign Co., each certificate covering twelve (12) shares.

These certificates are now surrendered to you to be transferred on the books of the company as follows: Issue a certificate for twelve (12) shares to George W.

Kleiser, and a certificate for twelve (12) shares to Walter F. Foster, and deliver both certificates to the bearer of this letter, who will give you a receipt therefor.

This is being done in accordance with the telephone conversation had yesterday between the writer of this letter and Mr. Charles King.

Yours very truly,

MORRISON, HOHFELD, FOERSTER, SHUMAN & CLARK,

By Herbert W. Clark

HWC:RF
Enc.

No. 5673-C. Special Site vs. Foerster & Kleiser Plf Exhibit No. 203 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The stock was finally surrendered to the company. Herman Weinberger, our attorney, handled the *the* transaction for us.

It was thereupon stipulated that a letter dated October 3, 1932, signed by Roland C. Foerster, was signed by said Foerster, a partner of Mr. Clark's. Said letter was thereupon received in evidence and marked Plaintiff's Exhibit 204 in evidence, and is in words and figures as follows:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 204.]

Law Offices of

MORRISON, HOHFELD, FOERSTER, SHUMAN & CLARK

A. F. Morrison (1881-1921)		C. Coolidge Kreis
Herbert W. Clark		W. T. Fitzgerald
Roland C. Foerster	Crocker	Wm. L. Holloway
Edward Hohfeld	Building	Francis C. Hutchens
J. F. Shuman		Garrett H. Elmore
Leon F. de Fremery	San Francisco	Noel A. Troy
Forrest A. Cobb		Emory L. Morris
		J. Hart Clinton
		Boice Gross

October 3, 1932.

Herman Weinberger, Esq.,
Merchants Exchange Building,
San Francisco, California.

Dear Herman:

I am sending you herewith the following certificates of stock of Special Site Sign Company:

Cert. No. 26, standing in the name of George W. Kleiser, for 12 shares;

Cert. No 27, standing in the name of Walter F. Foster, for 12 shares.

(Testimony of Charles H. King)

These certificates have been endorsed in blank by the record holders thereof.

These certificates are delivered to you for the purpose of surrendering them to Special Site Sign Company for surrender, cancellation and return to the Treasury of that company with the same effect as if the same had been purchased by the company at sale for delinquent assessment.

I am authorized on behalf of George W. Kleiser and Walter F. Foster to assure you that they relinquish all right, title and interest in the stock upon the surrender and cancellation thereof, as aforesaid, and that they raise no question as to the propriety of the assessment or the failure to have any sale for the delinquency thereof.

Kindly obtain an acknowledgment of the delivery of these certificates from the company direct to Messrs. George W. Kleiser and Walter F. Foster, in order that their records as to the disposition of the stock may be complete.

Very truly yours,

RCF:F Roland C Foerster

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 204 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

(Witness continuing:)

Between the years 1920 and 1929 the prices obtainable for outdoor advertising increased very considerably. With reference to the Bruecker location where we painted out a wall and moved our sign to a roof, the sale price of the roof was $75 a month and the price of the wall had been $22.50 a month. The wall was a very much better showing. There was less sales resistance, it was an eye-level location. The roof was high in the air and naturally had greater sales resistance. The reason the roof sign brought more money was that it was illuminated and the wall had not been illuminated up to that time. The roof was an all-steel sign and there was a difference in the investment of around $1,800. We have had a very hard time selling the roof location. It has been vacant for two years.

With reference to the Bertoli garage on Telegraph Avenue, I did not induce Mr. Bertoli to build that garage. He was going to do that anyway and he made that a part of the consideration upon which he would give us the site.

With reference to the Snow property on the margin of Temescal Creek, I testified that we lost the sign in 1925. On this sheet of the contract register, showing the Margetz contract, there are a number of locations. Each one of those represents a sign that was used to fill that contract. In the body of the page it shows 4701 Grove. That is the Snow property. I find that the location has been crossed off the register and that it also shows in the lefthand margin that the location had not been painted subsequent to the original painting on March 13, 1925.

(Testimony of Charles H. King)

I did not notice that at the time I testified that we repainted the sign in 1927.

Mr. Carrel, Donaldson Lithographing Company's representative, never called on me. If there was any investigation made of my plant I never heard of it. The posters provided for in these contracts between Donaldson Lithographing Company and Ashby Furniture Company, being part of Defendants' Exhibit UUU, did not go on our plant. I secured these contracts from the Ashby Furniture Company. I made a trip out to the Ashby Furniture Company to determine whether or not the statements made in the Donaldson letters that their service was sold posted on the poster boards as a completed service was true or not.

Q What is the fact?

MR. CLARK: Objected to as incompetent, because it is hearsay.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 205.

A I found the facts were that they merely sold the posters.

Witness continuing: I never got any posters from the Donaldson service.

Foster & Kleiser Company's office bulletin No. 22, dated August 26, 1921, was thereupon received in evidence and marked Plaintiff's Exhibit 207 in evidence, and is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 207.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 22

San Francisco, Cal.,
August 26, 1921

TO ALL BRANCHES:

Subject: Commissions to Donaldson Lithographing Company

The following is copy of our letter of August 25th 1921, to Mr. A. L. Lewis, Pacific Coast Representative, Donaldson's Lithographing Co., regarding the change in commissions, which change becomes effective immediately.

"Mr. Foster has referred to me your memorandum addressed to him under date of August 22nd in reference to commissions to be allowed Donaldson's Lithographing Co., by Foster and Kleiser Company and has requested that we communicate with you as follows:

1. We will allow the Donaldson's Lithographing Co. a commission of 16-2/3% on all national orders sent to us by Donaldson's Lithographing Co. provided such orders are in accordance with our standard specifications and terms.

2. We will allow the Donaldson Lithographing Co. a commission of 10% on all space sold locally in conjunc-

tion with you for Donaldson's service posters in any of our cities or towns in other than standard set showings—this 10% to be credited monthly on the amount of our monthly billing to the customer less the cost of the paper.

3. We will allow the Donaldson Lithographing Co. a commission of 10% on all space sold locally in conjunction with you for Donaldson's posters in any of our cities or towns in standard set showings. The 10% to be credited monthly on the amount of our monthly billing to the customer less the cost of the paper.

Mr. Foster mentioned the fact that you would in all probability be relieved of covering the States of Montana and Idaho. As you know, we have acquired a great many new cities and towns in the States of California, Oregon and Washington. We feel that by confining your sales efforts to these three States you will find that you will have plenty to do in order to cover them properly.—"

[Stamped on face of sheet]: REFERS TO BULLETIN DATED No. 42 2-18-22

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 207 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 42, dated February 18, 1922, was thereupon received in evidence and marked Plaintiff's Exhibit 208 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 208.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 42

San Francisco, Cal.,
February 18, 1922

TO ALL BRANCHES:

Subject: Donaldson Service Posters

Mr. Lewis, the Pacific Coast representative of the Donaldson Litho. Co. has advised us that the Donaldson Litho. Co. will send to each of our branches samples consisting of miniatures of all of their service posters. We have assured Mr. Lewis that we would welcome the samples and make every possible use of them.

We want to sell as many Donaldson posters as we can for without doubt there are a great many advertisers who can use this service with excellent results especially in our smaller towns. Several of the branches have men covering small towns and later on a systematic sales effort will be made to build up local business to the highest pos-

sible point in all our small towns and this is where the Donaldson Service will come in.

At the present time we have no price for quantities in less than five but we expect to have prices very shortly so that you can sell in quantities from two up.

When Mr. Lewis is in your territory he will work in conjunction with your salesmen but as it is impossible for him to remain at any one point for any great length of time naturally he will have to leave the prospects on which he has worked in the hands of our salesmen. We assured Mr. Lewis that we would work on these prospects just as diligently as if he were on the ground himself and in the event of a sale the Donaldson Litho. Co. would be credited with the 10% commission the same as if the deal were closed by him. Further we will allow 10% to the Donaldson Litho. Co. on sales made direct with a customer for Donaldson service whether Mr. Lewis worked on the account or not. This commission will be more than offset by the saving in designing expense.

There are many cases where Donaldson posters can be used where hand-painted posters would be prohibitive and as this is business which can be developed and at a profit, we ask that you put the Donaldson service in the hands of your salesmen with instructions to use it wherever it can be used to the benefit of the customer.

Another thing Mr. Lewis spoke about was the fact that none of our salesemen seemed to be acquainted with the Donaldson prices. These prices are on the last page of our book of specifications and we ask that you give

(Testimony of Charles H. King)

2—Donaldson Service Posters

each salesman a copy of this price list.

We also agreed to allow the one-year rate on contracts sold to what might be termed "seasonable customers." There are advertisers who desire to use say three months in the Spring and three months in the Fall. On a contract of this kind signed up for two years so as to make twelve months in all we will allow one-year rate; that is conditioned upon the fact that the Donaldson Litho. Co. will allow us the one-year rate on the poster for after all our price on the Donaldson Service is based upon our space plus the cost of the paper.

[Stamped on face of page 1]: REFERS TO BULLETIN DATED No. 22 Aug. 26-21

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 208 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: In 1922 the screen process for posters had not been developed and the cost of our painted posters was in many cases prohibitive.

Foster & Kleiser Company's office bulletin No. 265, dated September 11, 1924, was thereupon received in evidence and marked Plaintiff's Exhibit 209 in evidence, and is in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 209.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 265.

San Francisco, Cal.,
SEPTEMBER 11, 1924.

FOSTER AND KLEISER COMPANY

Messrs.	Walter F. Foster	San Francisco
	Geo. W. Kleiser	Los Angeles
	A. F. Lausen, Jr.	Seattle
	W. F. Thompson	Portland
	R. A. Edwards	Oakland
	Albert Mortenson	Long Beach
	R. S. Montgomery	San Diego
	R. W. Olmsted	Tacoma
	E. R. Everett	Sacramento
	A. W. Zamloch	Fresno
	G. B. Haynes	Medford.
	S. Carman	
	Miss H. Salin.	

(Testimony of Charles H. King)

Gentlemen:

Re: PRICE LIST DONALDSON SERVICE.

Following are revised prices on Donaldson's service EFFECTIVE January 1, 1925:

DONALDSON SERVICE.

(Advertiser is privileged to select locations)

SAN FRANCISCO LOS ANGELES OAKLAND, ALAMEDA AND BERKELEY

TERM		5 to 9 Inc.	10 to 24 Inc.	25 or Over
12 months	Unillum.	22.50	20.00	17.50
12 months	Illum.	40.00	37.50	35.00
6 to 11 mos.	Unillum.	25.00	22.50	20.00
6 to 11 mos.	Illum.	42.50	40.00	37.50
3 to 5 mos.	Unillum.	27.50	25.00	22.50
3 to 5 mos.	Illum.	45.00	42.50	40.00

ALL OTHER CITIES AND TOWNS OPERATED BY FOSTER AND KLEISER COMPANY

TERM		5 to 9 Inc.	10 to 24 Inc.	25 or Over
12 months	Unillum.	20.00	17.50	15.00
12 months	Illum.	37.50	35.00	32.50
6 to 11 mos.	Unillum.	22.50	20.00	17.50

(Testimony of Charles H. King)

6 to 11 mos. Illum.	40.00	37.50	35.00
3 to 5 mos. Unillum.	25.00	22.50	20.00
3 to 5 mos. Illum.	42.50	40.00	37.50

An advertiser using Donaldson Posters desiring to contract for a standard set showing may do so by paying the regular price for the set showing and furnishing the posters.

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr
A. F. Lausen, Jr.
General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 209 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 288, dated December 10, 1924, was thereupon received in evidence and marked Plaintiff's Exhibit 210 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 210.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 288

San Francisco, Calif.,
December 10, 1924

FOSTER AND KLEISER COMPANY

Messrs. Walter F. Foster

Mr. D. R. McNeill, Jr.	San Francisco	George W. Kleiser
Mr. Georges Musaphia	Los Angeles	A. F. Lausen, Jr.
Mr. G. E.O'Neil	Seattle	W. F. Thompson
Mr. H. P. Dueber	Portland	R. A. Edwards
Mr. Grant M. Smith	Oakland	Albert Mortenson
Mr. Geo. A. Sample	San Diego	R. S. Montgomery
Mr. Lyle Abrahamson	Tacoma	R. W. Olmsted
Mr. W. C. Brown	Long Beach	E. R. Everett
Mr. W. H. Funk	Sacramento	A. W. Zamloch
Mr. P. H. Pande'	Fresno	G. B. Haynes
Mr. M. D. Cole	Medford	S. Carman

Miss Salin.

Re: Commission to Donaldson Lithographing Company

Gentlemen:—

On and after this date the following are the commission rates to be allowed the Donaldson Lithographing Company:

(Testimony of Charles H. King)

DONALDSON SERVICE POSTERS

A commission of 10% monthly is to be allowed on the space used for service posters irrespective of whether the Donaldson representative closed the order or not. No commission is to be allowed on the cost to us of the posters.

NATIONAL ACCOUNTS

On all national accounts where the Donaldson Lithographing Company sends us an order in accordance with our specifications for standard set showings a commission of 16-2/3% is to be allowed.

COOPERATIVE NATIONAL ACCOUNTS

(a) Where the manufacturer furnishes the paper and participates in the cost of posting, if the Donaldson Lithographing Company assumes the responsibility of collection both from the manufacturer and dealer they are to be allowed a commission of 16-2/3%, in which event the invoice for the entire posting is to be rendered direct to

Donaldson Lithographing Company.

(b) Where the manufacturer furnishes the paper and the dealer pays the entire cost of the posting, and where we invoice and collect from the dealer the Donaldson Lithographing Company is to be allowed a commission of 10% on the amount of the invoice.

(Testimony of Charles H. King)

(c) Where the manufacturer furnishes the paper and the dealer pays the entire cost of the posting but where we invoice and collect from the Donaldson Lithographing Company, the Donaldson Lithographing Company is to be allowed a commission of 16-2/3%.

The Donaldson Lithographing Company has requested, on those cooperative national accounts where the manufacturer participates in the cost of the posting, that we clear the entire order through them to facilitate their handling of the account. This would apply to accounts such as Willard Battery, Hoover Vacuum Cleaner, Oshkosh Overalls and Apex Washing Machines.

If our own salesmen close the dealers on accounts of this nature a clause should be inserted in our regular contract form that: "The dealer's share of the posting is to be paid to the Donaldson Lithographing Company, Newport, Kentucky."

The original contract should then be sent by you direct to the Donaldson Lithographing Company, at the same time sending a copy to Mr. Carman of our General Posting Department with instructions to him to reserve the space, keeping a third copy for your own files. The Donaldson Lithographing Company will then send to our General Office in San Francisco their own contract to cover the full amount of the space, which contract will be forwarded to you by the General Posting Department in the usual manner.

(Testimony of Charles H. King)

Under these conditions the Donaldson Lithographing Company is responsible for collecting both the manufacturer's and the dealer's share and will pay us the entire amount of the posting for which we will allow them the full 16-2/3% commission even though our own salesman made the sale.

There are no changes to be made in the methods which we have been following in the past in the handling of any other Donaldson accounts or their service posters.

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr.

A. F. Lausen, Jr.

General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 210 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 363, dated September 29, 1925, was thereupon received in evidence and marked Plaintiff's Exhibit No. 211 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 211.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 363.

San Francisco, Calif.
SEPTEMBER 29, 1925.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. W. C. Brown	Long Beach
Mr. Lyle Abrahamson	Tacoma
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford,
Mr. W. H. Funk	Sacramento.
Mr. W. F. Foster	Mr. Noble Hamilton
Mr. Geo. W. Kleiser	Mr. S. Carman
Mr. A. F. Lausen, Jr.	Miss H. M. Salin

—Mr. W. F. Thompson
Mr. R. S. Montgomery
Mr. Albert Mortenson
Mr. R. A. Edwards
Mr. R. W. Olmsted
Mr. G. B. Haynes
Mr. A. W. Zamloch

(Testimony of Charles H. King)

Mr. E. R. Everett, New York Office.

Gentlemen: Re: Pice List Donaldson Service.

Effective immediately and superseding all former bulletins on the subject of the price list of Donaldson service, the price for Donaldson service posters on selected locations will be the regular catalog price for the poster panels on the basis of prices for quantities other than standard set showings plus the actual cost of the posters.

Prices for poster panels other than standard set showings are

Illuminated – – – –$45.00 a panel per month,

Unilluminated – – – 15.00 a panel per month.

The price of the Donaldson service posters vary in accordance with the number of posters purchased at one time. Therefore the number of posters used per month and the length of the time covered by the contract will naturally influence the price.

The Donaldson Lithographing Company as heretofore are to receive 10% commission on the COST OF THE SPACE ONLY. An advertiser using Donaldson posters desiring to contract for a standard set showing may do so by paying the regular price for the standard set showing and furnish the posters.

Very truly yours,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr.

A. F. Lausen, Jr.

General Manager

AFL*AP

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 211 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 379, dated December 10, 1925, was thereupon received in evidence and marked Plaintiff's Exhibit 212 in evidence, and is in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 212.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 379.

San Francisco, Calif.
DECEMBER 10, 1925.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford.

(Testimony of Charles H. King)

Gentlemen: Re: Remittances to Donaldson Lithographing Co.

We are in receipt of a letter from Mr. A. L. Lewis, the Pacific Coast representative of the Donaldson Lithographing Co., with which he enclosed a copy of a letter from his Home Office under date of November 30th over the signature of Mr. C. R. Slater, Assistant Sales Manager, which we are quoting:

"We wish you would take up with Foster & Kleiser the question of reimbursing us in full for such items as they are paying instead of paying for the paper at one time and then in a later check our commission on the space. I do not know why they divide their remittances this way but it is very confusing to our Bookkeeping Department, especially when Foster & Kleiser does not specify the number of our invoice for which the payment is being made.

"You understand that if on a certain contract the cost of the paper amounts to $25.00 and our commission on the space amounts to $5.00, the total charge to Foster & Kleiser is $30.00, and we make out our invoice for that total amount, $30.00. Well now today they may send us check for $25.00 and then next week or in the next two or three weeks they may send us a check for $5.00. When we receive those individual remittances there isn't any way for us to tell just what charges they are to be applied against, and as already stated, this is very confusing to our Bookkeeping Department, and sooner or later it is going to cause a good deal of trouble with our account conforming to Foster & Kleiser's account.

"So, will you please ask them in sending us remittances to please remit in full at one time for both the paper and

(Testimony of Charles H. King)

the commission on the space, and ALSO SPECIFY THE NUMBER OF OUR INVOICE FOR WHICH PAYMENTS ARE BEING MADE. After taking this up with them please let us know whether or not they will accommodate us in this regard."

No. 379.

#2:

Should it happen that this letter is written because of remittances received by them from your office we would ask that you kindly do the necessary to have your remittances to the Donaldson Lithographing Co., go forward in the manner as outlined in Mr. Slater's letter quoted which we understand is the method which has been followed in the past by our Company.

We thank you.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT:LMS

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 212 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 435, dated September 20, 1926, was thereupon received in evidence and marked Plaintiff's Exhibit 213 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 213.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#435

San Francisco, Calif.
Sept. 20, 1926

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford
Mr. Geo. W. Kleiser	Mr. G. B. Haynes
Mr. Walter F. Foster	Mr. Blaine Klum
Mr. A. F. Lausen, Jr.	Mr. E. R. Everett, N. Y.
Mr. W. F. Thompson √	Miss H. M. Salin
Mr. R. S. Montgomery	
Mr. Noble Hamilton	
Mr. S. Carman	
Mr. A. W. Zamloch	
Mr. R. A. Edwards	
Mr. Albert Mortenson	
Mr. R. W. Olmsted	

(Testimony of Charles H. King)

Gentlemen: RE: PRICES POSTER PANELS OTHER THAN STANDARD SET SHOWING. PRICE LIST DONALDSON SERVICE

In our new catalogue about to be published is a revised quotation of prices for poster panels other than standard set showings, which will be effective immediately.

These prices are:

Illuminated	$45.00 a panel per month
Unilluminated	10.00 a panel per month

You will note that this is a reduction of $5.00 per month on the unilluminated panels. This reduction is the result of the returns to the questionnaire recently forwarded to all our branches on this subject.

The reduction on prices for poster panels other than standard set showings automatically influences the prices set forth in Bulletin No. 363 on the subject "Price List Donaldson Service" issued under date of September 29th, 1925, over the signature of Mr. A. F. Lausen, Jr.

Will you kindly mark your records in keeping with this information.

Yours very truly,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT/EB Assistant General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 213 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 461, dated May 16, 1927, was thereupon received in evidence and marked Plaintiff's Exhibit 214 in evidence, and is in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 214.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#461

San Francisco, Calif.
May 16, 1927.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Long Beach
Mr. M. D. Cole	Fresno
Mr. A. A. Hayden	Medford

(Testimony of Charles H. King)

Gentlemen: RE: PRICE LIST DONALDSON SERVICE

We have been given a revised price list by Mr. Lewis, Pacific Coast Representative of the Donaldson Lithographing Company, copies of which it is our pleasure to herewith enclose. We believe that the price list is self-explanatory and should be used in connection with the Donaldson selling plan as referred to in Office Bulletin #435 in which Bulletin #363 is referred to.

Very truly yours,

FOSTER AND KLEISER COMPANY,

W. F. Thompson
W. F. Thompson,
Assistant General Manager.

WFT:IHO

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 214 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 554, dated June 12, 1931, was thereupon received in evidence and marked Plaintiff's Exhibit 215 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 215.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#554

San Francisco, Calif. June 12, 1931

TO EXECUTIVES, BRANCH MANAGERS, AND GENERAL OFFICE DEPARTMENT HEADS:

RE: COMMISSION TO DONALDSON LITHOGRAPHING CO.

Reference is made to Office Bulletin No. 288, with particular regard to the introduction and paragraph 1 which reads:

"On and after this date the following are the commission rates to be allowed the Donaldson Lithographing Company:

"DONALDSON LITHOGRAPHING POSTERS

"A commission of 10% monthly is to be allowed on the space used for service posters, irrespective of whether the Donaldson representative closed the order or not."

Our plan of agency recognition has brought about a condition which calls for an adjustment of commission on this particular Donaldson service. On and after the date of this Bulletin you should, on Donaldson Service Posters, adopt the following procedure:

A commission of 10% monthly is to be allowed on the space used for service posters, except where the particu-

(Testimony of Charles H. King)

lar account is one controlled by an advertising agency which has received our formal agency recognition. In such case, a commission of 16-2/3% is to be allowed; 10% to be paid by you direct to the advertising agency, and 6-2/3% to the Donaldson Lithographing Company.

It is thoroly understood by the representative of the Donaldson Lithographing Company that he is to work in perfect harmony with the agency policy of Foster and Kleiser Company and that he will cooperate with our account executives in contacting agencies and accounts.

This bulletin in no way supersedes your previous instructions on national accounts and cooperative national accounts but has to do only with Donaldson Service posters for accounts controlled by advertising agencies.

Kindly acknowledge this bulletin.

A. F. Lausen Jr.
A. F. Lauson, Jr.
General Manager

AFL:M

No. 5673-C Special Site vs. Foster & Kleiser Plf Exhibit No. 215 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 558, dated October 28, 1931, with letters attached, was thereupon received in evidence and marked Plaintiff's Exhibit 216 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[Plaintiff's Exhibit No. 216.]

Mr. Kleiser Jr.

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#558

San Francisco, Calif. October 28, 1931

TO EXECUTIVES, BRANCH MANAGERS, AND GENERAL OFFICE DEPARTMENT HEADS:

RE: DONALDSON LITHOGRAPHING CO.

Attached hereto you will find:

1. Copy of our letter of October 5th, 1931, addressed to Mr. A. L. Lewis, Pacific Coast Representative of the Donaldson Lithographing Co., 218 So. Carson Road, Beverly Hills, California;
2. Copy of letter dated October 19, 1931, from the Donaldson Lithographing Co., Newport, Kentucky, signed by Mr. R. D. Carrel, Sales Manager, addressed to Foster and Kleiser Company, Eddy Street at Pierce, San Francisco, California, attention Mr. A. F. Lausen, Jr., General Manager;
3. Copy of our reply thereto under today's date.

The arrangement set forth in our letter of October 5th, 1931 is that under which we will work with Mr. Lewis until further notice. It cancels and supersedes all previ-

(Testimony of Charles H. King)

ous arrangements and understandings that we have had with the Donaldson Lithographing Company.

Please advise.

A. F. Lausen Jr.
A. F. Lausen, Jr.
General Manager

AFL.Jr/PH
Encl.

No. 5673-C Special Site vs. Foster & Kleiser Plf Exhibit No. 216 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The letters read yesterday with reference to the Camel Cigarette contract and others were not all the efforts we made to secure business. We had around 200 boards at this time. In 1927 my signboard inventory shows that we had 600 or thereabouts, and almost any time we could have gotten 18 or even 36 boards together and call it a quarter or a half showing if we had wanted to, that is, if we had a sale for them. In those quarter or half showings we did not have the distribution which is required to make a standard set showing. We had nothing on Webster Street, Harrison, West 14th Street, West 12th Street, West 8th Street, in Oakland. We weren't able to get anything in there. Foster & Kleiser had everything that was available tied up. This showing which we sold the Camel was not a standard set showing. A standard set showing is half illuminated and half unilluminated. This showing that we sold to Camel was only 25 per cent illuminated. We weren't able to make up a

(Testimony of Charles H. King)

showing for them, so we cooperated with the Coast Advertising Company, who were at that time an independent company operating in Oakland, and they took half of it on their plant. During the life of that contract, the Coast was bought by Foster & Kleiser. I recall reading a letter yesterday about making some adjustments or some cooperation in connection with the account. Without regard to what is in the letter, the Reddington Agency or the Camel account wanted changes made in the locations and Foster & Kleiser wouldn't make the changes, so it was necessary for us to do so. We did not get a renewal of the contract.

RE-CROSS EXAMINATION

BY MR. CLARK:

It would be impossible to describe and enumerate every outdoor advertising location which Foster & Kleiser had under lease from 1929 down to the time this case began on Webster, Harrison, West 14th, West 12th and West 8th Streets in Oakland.

MR. CLARK: Then, I now move to strike out the witness' statement that Foster & Kleiser had everything on those streets tied up, it being now obviously a conclusion of the witness.

THE COURT: Well, I don't think that sufficiently appears. Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 206.

Witness continuing: It would not be possible to name all of those locations or the year in which Foster & Kleiser Company had them tied up.

(Testimony of Mrs. Martha S. Montgomery)

BY MR. STERRY:

On the Bruecker location we were getting $22.50 a month for the wall and $75 for the roof. We lost the wall and still have the roof. The roof is designed for a paint board to be sold with other boards. If we had lost the roof, my formula would not have given me a much higher value for the roof than it would for the wall because the wall sign was not sold at its market value. The value would possibly be the same. The roof sold at its market value and I got as much as I thought I could get for it. By applying the formula to obtain the value of the wall, I assumed that we would have gotten $75 a month for it, but we figured to get $100 for the wall. If I lost the roof now, I think I could still apply my formula to it even in view of the fact that we had it unsold for two years.

Thereupon

MRS. MARTHA S. MONTGOMERY

was recalled as a witness on behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION

BY MR. GLENSOR:

I prepared these sheets marked "Interchange of business between Special Site Sign Company and other independent plants 1917 to 1934 inclusive." The figures on there are all actual figures as taken from the Special Site Sign Company's books. Special Site Sign Company occasionally sends advertising to be posted on the boards of other companies. In some cases we get a commission on that business and in some cases we do it on a reciprocity basis. In cases

where we have waived the commission I have shown that the commission was waived on these papers and I have not added any figures in them except where we have actually collected a commission. On occasion other independent companies send advertising to be placed on our boards for which we receive compensation from which we pay a commission to the other advertising company. By this sub-heading on this paper, "Including business secured by Special Site Sign Company through independent solicitors," I refer to solicitors who, when they get accounts, send them to independent companies, as distinguished from the Association plants. The first item on these papers is "Business placed on Special Site Sign Company's plant" and in that column appears the name of the plant or solicitor securing the business for Special Site Sign Company. The next column shows the name of the advertiser. The column headed "Commission earned by plant or solicitor" means the actual commission paid to the man sending us the business. I have taken no hypothetical transactions here at all. They are all actual transactions from the years 1927 to 1933. The column there showing the dates and amount of the contracts shows the gross amount of the contracts after deductions caused by cancellations.

Q And what is the total amount of money received by the Special Site Sign Company from exchange of business with independent plants and commissions?

(Testimony of Mrs. Martha S. Montgomery)

MR. CLARK: Objected to on the ground it is irrelevant, incompetent, immaterial and misleading.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 207.

A The net amount, deducting cancellations, is $111,600.31.

Witness continuing: The total amount of commissions received by Special Site Sign Company or paid by them to other independents amounted to $7,233. I do not distinguish whether they were received by Special Site Sign Company or paid by Special Site. The right-hand column of these papers is headed "Date Plant Purchased By Foster & Kleiser." In that opposite some of these companies, there are dates. Opposite the names of some of them there is no date. Where that column is blank it is intended to mean that that plant has not been purchased or absorbed by Foster & Kleiser.

The papers referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 217 in evidence, and are in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 217.]

INTERCHANGE OF BUSINESS BETWEEN SPECIAL SITE SIGN COMPANY AND OTHER INDEPENDENT PLANTS—1917 to 1934, Inclusive.

(1) BUSINESS PLACED ON SPECIAL SITE SIGN CO. PLANT BY OTHER INDEPENDENT PLANTS OR INDEPENDENT SOLICITORS:

Name of Plant or Solicitor	Account Name and Type of Display	Date and Term	Amount of Contract (Face Value)	Amount Received (Cancellation, if any, deducted)	Commission to Plant or Solicitor	Date Plant Purchased by Foster & Kleiser Co.
Robt. Cordtz Co., San Diego	Savage Tires Eight 10x50 ft. Bulletins, @ $20 ea. per month	1917 12 Months	$ 1,920.00	$1,920.00	$288.00	
" "	Federal Tires Thirty-three 10x25 ft. Bulletins	Apr. 1, 1918 4½ Year Term	10,098.00	10,098.00	$504.90	
Ivan B. Nordham Co., New York	Ajax Tires 2—16x100 ft. Bulletins 1—16x60 ft. " 5—10x50 ft. "	May 20, 1919 3 Year Term	6,140.00	6,140.00		
Robt. Cordtz Co., San Diego	Patton Paint 3—10x50 ft. Bulletins	Aug. 1, 1919 3 Year Term	3,456.00	3,456.00		
Independent Adv. Co., San Francisco	G & J Tires 17—10x50 ft. Bulletins @ $22.50 ea. per month	Nov. 1, 1920 2 Year Term	7,776.00	4,545.00		July 17, 1922

F. B. Heider, San Francisco	Luthy Battery 37—10x50 ft. Bulletins @ $20.00 ea. per month	Oct. 7, 1921 3 Year Term	26,640.00	9,461.68	888.00	July 1, 1929
Independent Advertising Co., San Francisco	Spring Eze 15 10x50 ft. Bulletins	Feb. 23, 1922 3 Year Term	6,750.00	2,437.50	121.88	July 17, 1922
Robt. Cordtz Co., San Diego	American Tobacco Co. 160 3-Sheet Panels	Feb. 21, 1925 12 Mos. Term	3,840.00	3,840.00	Commission waived	
C. E. Stevens Co., Seattle, Wash.	Hyvis Oil 32—10x50 ft. Bulletins 4—10x25 ft. " 22— 5x12 ft. "	Oct. 14, 1926 2 Year Term	13,680.00	11,812.88	590.64	
West Coast Adv. Co., San Francisco	Isuan Ginger Ale 8 City Bulletins	Aug. 1, 1928 3 Year Term	10,800.00	3,495.00	Commission Waived	
M. F. Reddington, Inc., New York	Camel Cigarettes 40 24-Sheet Posters	Jan. 1, 1930 1 Year	7,008.00	7,008.00	1,168.00	Retired from business Oct. 4, 1932.
La Fon System, Los Angeles	La Vida Mineral Water Posters & Painted Bulletins City and Highway	Years 1930 and 1931	4,070.00	1,294.85	Commission waived	April 1, 1930
C. E. Stevens Co., Seattle, Wash.	Coca Cola 24-Sheet Display	Years 1931 to 1934, inc. intermittently	9,553.60	9,553.60	114.90	
D. G. Westbrook Co., Russ Bldg., San Francisco	Star Olive Oil 7—10x50 ft. Bulletins	Dec. 19, 1929 1 Year Term	1,176.00	1,176.00	117.60	Retired from business November, 1930
Forward to Sheet #2			$112,907.60	$76,238.51	$3,793.92	

Sheeet #2

Name of Plant or Solicitor	Account Name and Type of Display	Date and Term	Amount of Contract (Face Value)	Amount Received (Cancellation, if any, deducted)	Commission to Plant or Solicitor	Date Plant Purchased by Foster & Kleiser Co.
Forward from Sheet #1			$112,907.60	$76,238.51	$3,793.92	
D. G. Westbrook Co., Russ Bldg., San Francisco	W. P. Fuller & Co. Three Animated DeLuxe Bulletins	Dec. 9, 1929 5 Year Term	$18,000.00	$13,440.00	1,620.00	Retired from Business November, 1930
"	Pet Milk Four DeLuxe Illuminated Bulletins	Feb. 25, 1930 3 Year Term	14,250.00	4,006.80	171.00	"
"	M. J. B. Coffee Two Animated DeLuxe Bulletins	July 1, 1930 3 Year Term	9,720.00	7,008.00	558.00	"
"	Sinclair Oil Three Painted Bulletins One Painted Bulletin	June 14, 1930 3 Yr. Term 1 Yr. Term	4,992.00	4,992.00	748.80	"
"	Superba Products Two Painted Bulletins	Sept. 19, 1930 3 Year Term	5,700.00	5,700.00	342.00	"
Pacific Outdoor Adv. Co., Los Angeles	Kwickorn Two Hand-Painted Posters, Ill.	March 6, 1933 Two Months	215.00	215.00	Commission Waived	

(2) COOPERATION GIVEN BY SPECIAL SITE SIGN CO. IN PLACING OF BUSINESS ON OTHER INDEPENDENT PLANTS:

J. R. Owens, Elevated Sign Service, Seattle, Wash.	Emerson Drug Co. Bromo Seltzer Wall Displays	March—1920	Unknown	Commission Waived	"	"	January 19, 1922
Allen & Watt and Union Advertising Co., Los Angeles	Bass Hueter Paints Painted Bulletins	March, 1924	"	Unknown	"	"	March 10, 1924
"	Standard Fence Co. Painted Bulletins	January, 1924	"	"	"	"	March 10, 1924
C. E. Stevens Co., Seattle, Wash.	National Lead 24-Sheet Posters	February, 1933	"	"	"	"	
Roht. Cordtz Co., San Diego	"	"	"	"	"	"	
Pacific Outdoor Adv. Co., Los Angeles	"	"	"	"	"	"	
Sampson & Perrin, Long Beach	"	"	"	"	"	"	
Retzloff Adv. Co., Eureka	"		"	"	"	"	

TOTAL AMOUNT OF CONTRACTS (Face Value)..... $165,784.60

NET AMOUNT RECEIVED BY SPECIAL SITE SIGN CO. UNDER SAID CONTRACTS (Cancellations deducted)..... $111,600.31

COMMISSIONS RECEIVED BY INDEPENDENT PLANT OR SOLICITOR.....$7,233.72

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 217 Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Mrs. Martha S. Montgomery)

Witness continuing: I prepared Plaintiff's Exhibit 128, a summary of operating statements by which I showed the gross income of the Special Site Sign Company from 1917 to 1934, inclusive. This exhibit shows the entire gross income under that heading from all sources of the Special Site Sign Company. I prepared and gave to Mr. Westbrook a statement of the income from advertising sales for the purpose of making a graph. I have seen this graph, Plaintiff's Exhibit 190, before and have examined the black line figures which represent our actual income from sales of advertising. There is a variation of some $1,300 or so between the figures in Plaintiff's Exhibit 128 and those shown on this graph, which was miscellaneous income that we had apart from advertising sales.

On these financial statements of the Special Site Sign Company I set up the capital value of the assets; for example, if a signboard is built, I take it into account as a capital asset on the first of each year by inventory, on the basis of its salvage value. The automobiles are carried at cost less depreciation each year, and leases are carried at approximately the cost of securing them. The office furniture and fixtures are also carried on the books at cost less depreciation.

CROSS EXAMINATION

BY MR. CLARK:

I am a stockholder of the Special Site Sign Company. The company owes both me and my mother money. Every one of the items on Plaintiff's Exhibit 217 will be found in the books of the company except the first item for the year 1917. That is the Robert Cordtz Company for the

(Testimony of Mrs. Martha S. Montgomery)

Savage Tire account. Our books don't go back that far and that is the only one.

Q So there is nothing in any of the books of account now in court or available to me which would support that item?

A That one item of 1920 was given to me by Mr. King and I confirmed it with Mr. Cordtz before I made the statement.

MR. CLARK: I move to strike out the part of the witness' answer wherein she says that it was given to her by Mr. King and she confirmed it by Mr. Cordtz, both being as conclusions; and, furthermore, as not being responsive and being immaterial, anyway, the defendant being entitled to the date from which the summary is made.

THE COURT: Denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 208.

Witness continuing: All the data which I have incorporated in the chart will be found in the books of account with the exception of the first item. When I spoke of the salvage value in connection with our structures that is approximately the value of the lumber and the material in the signboard taken down. The value that we have on the books was figured out in 1924 by Mr. King and myself and it has been carried at approximately the same through the years. It has been approximately the same value for the types of signs as we arrived at at that time. The physical value of the sign is not very great. It is the

(Testimony of Mrs. Martha S. Montgomery)

income value from it. The salvage value is not based upon or measured by the income value in any degree. Nowhere in the books of the Special Site Sign Company are there any figure or figures of cost for new construction during any year in which I have been employed by the Special Site Sign Company. We don't carry it that way on the books. Nowhere in the books is there any data showing the cost of construction for all years to date, nor is there anything in the books from which anyone could derive the average cost per bulletin or check the average presented by me in Plaintiff's Exhibit 127. On this Plaintiff's Exhibit 127 the figures on the right-hand column represent the average cost. I have already testified that I calculated that average and then destroyed the data and documents, believing there was no further use or need to keep the calculations or the documents from which I calculated it. There are seven different kinds of bulletins and panels listed there and I have given in the right-hand column the average cost per bulletin. We figured each one out carefully from the material that went into the sign and have arrived at these figures as being the correct average cost of the different type of bulletins enumerated. We have not carried the cost of material in our books. When we paid our lumber bills we charged it to painting and construction. Under this item we have items and entries which may be painting and construction or which may be the cost of lumber. Under that item we also carry paint and metal, nails, hardware and everything that goes into a sign. It is all charged to painting and construction on the books, without reference to time, except occasionally. Nowhere on the face of that account is it indicated how

much painting and construction and how much lumber and how much metal and how much nails went into a 4x6 target, nor does it indicate anywhere how much of those materials went into a 25-foot poster panel or into a 10x50 highway bulletin. I did not get any help from the painting and construction account in segregating the value of the 10x50 from the average value of a 4x6 target. I used the bills that applied to the sign at the time the sign was built, and figured out the cost per lineal foot. Some signs are perhaps built 10 feet from the ground and some 20 feet, and more rough lumber would go into one than the other, but we figured it and averaged it, and arrived at this cost per lineal foot. We figured the actual cost of the construction of a 10x50 bulletin. We have done it dozens of times, each one separate, as it has been completely built. Then we averaged a great number of them and arrived at this figure. We have used that average per lineal foot for quite a few years now. I had figured the labor cost per day recently. This other cost we arrived at some years ago and there has been so little difference that we used the same schedule. There is nothing in the books of account from which you could check the accuracy of this schedule, and there is nothing available which would enable you to check the accuracy of it. Under the heading "Cost of paint crew" on this schedule there is an item "Journeyman $12 a day." The average cost of the construction crew per day was $24 and the paint crew was $29, without road expense. The item for the journeyman painter is not an average cost, but the actual amount paid. It is not a fact that $12 a day was the highest union rate for journeymen painters. We paid as high as $71 a week for

44 hours' work. That was when Harry Stingle was working for us, and he worked about 8 years for us. I would say we paid him at the rate of $71 a week for at least three or four years of that time. There is no data in our books from which you can ascertain the number of signs that were constructed during any given period, or that were being worked upon during any given period.

On Plaintiff's Exhibit 128, which is a summary of operating statements, the last figure there is for 1934, $33,252.98. That exhibit was apparently introduced on December 14, 1934 and does not carry the year's operations to the close of the year but I was able to figure out from the books what our income would be for December at the time I made this up. That is the gross income; I don't show any expense. I could not figure out what our expense would be during that time. I made no allowance at all on this schedule for the fact that the year was not yet over. It is all in our current books.

The contract register, marked Plaintiff's Exhibit 121-A for Identification, is complete, except for our present current live contracts which were never kept in there. Those are the transfer sheets. Plaintiff's Exhibit 121-A for Identification is complete for the period that it covers.

According to the books now before me, the rental expenses of the Special Site Sign Company in 1926 were $5,828.28, in 1927 $7,293.39, in 1928 $6,781.77, 1929

$7,222.13, 1930 $7,548,98, in 1931 $6,705.90, in 1932 $5,961.65, and in 1933 $5,547.71.

The company does not keep a record showing the cost of various operations. We don't have any separate account for maintenance. It goes under painting and construction. I can't take any item under painting and construction and tell you whether it is for maintenance or construction. We don't keep it separate. The same thing is true with respect to posters. Wages are charged up per week, and we don't make any reference to whether it was maintenance work or building of new structures. The same thing is true with respect to the cost of structures and the cost of removing structures.

REDIRECT EXAMINATION

BY MR. GLENSOR:

Mr. King and I worked out the salvage value of various types of signs in 1924. These signs that have been constructed since 1924 have been adjusted each year by inventory.

BY MR. CLARK:

The first of each year we take an inventory of all our signs and make an entry on the books to reconcile the value to the previous year's inventory so that any new signs that have been added are set up in the books in that way on the first of each year. We take our inventory on our books at the beginning of the year 1933 at so much, being the salvage value. That was arrived at January 1, 1924 when

(Testimony of Mrs. Martha S. Montgomery)

we made out the inventory since 1920. It has been carried on the books through these years at the same value for each type of board. If we lost a 10x50 bulletin, that simply disappeared from our inventory at salvage value. I did it each year in the total inventory. We made out a new inventory the first of January each year, and if it was more than it was the previous year we entered that sum so as to show the correct salvage inventory value as of January 1st. If on January 1, 1926 we had two more 10x50 boards than we had on January 1, 1925, we added the salvage value of those two boards for January 1, 1926 at the same value that the 10x50 boards had in 1925, and went through a similar operation with all the boards.

Mr. Glensor thereupon read in evidence a portion of office bulletin No. 550-A dated April 6, 1931, in words and figures as follows:

"The instructions herein contained supersede and cancel the following office bulletins: No. 74, No. 209, 242, 242-A, 245, 446, and any and all instructions or policies inconsistent herewith contained in any other office bulletins, general correspondence or otherwise.

"Very truly yours,
"FOSTER AND KLEISER COMPANY,
"George W. Kleiser, President."

A portion of Foster & Kleiser Company's bulletin No. 478, dated August 27, 1927, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-M in evidence. Said portion so received in evidence is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

"Gentlemen:

RE: PERCENTAGE CHARTS OF BRANCH OPERATIONS AND UNIT SPACE RENTAL CHARTS."

The portion I am reading is a paragraph on page 2.

"Unbuilt Space shows an increase of one per cent over last year. One per cent of the income would mean an increase of about $75,000 for a yearly period. This is not too much to pay for insurance, provided it is really insurance. The answer to the question of whether or not the amount of unbuilt space is good insurance will be found in the amount of rentals paid for our built space. This item of space rental (for built space) has increased 1% likewise and we are now paying slightly over 10% of our gross income for built space. Fortunately, the Long Beach Branch shows it is possible to reduce this item of space rental or at least the percentage it bears to the income. Three years ago the Long Beach Branch was paying a greater percentage of its income for space rentals than any other Branch on the coast. At the present time it is nearly 2% below the combined average."

It was thereupon stipulated that the portion so read into evidence was not the sole subject of the bulletin but that the bulletin covered generally the results of a statistical survey of the branches.

(Testimony of Mrs. Martha S. Montgomery)

A portion of Foster & Kleiser's bulletin No. 238, dated June 13, 1924, was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 2-N in evidence. Said portion so received in evidence is in words and figures as follows, to-wit:

"Subject: Quarterly Percentage Charts.

"The Maintenance of Plant item has shown the correct trend throughout the year and is almost down to the figure of a year ago. The Long Beach and Sacramento Branches are still high in this item but with the completion of their building programs should rapidly reduce the figures of last year. This item, Maintenance of Plant (Prime Cost) no longer appears on the General Monthly Reports as prepared by the branches. In its place there now appears two items, 'Building Plant'—'taking down plant' and these two accounts may be carefully studied by reference to Sheet No. 7 Inventory of Plant and Sheets Nos. 8 and 9, which show the cost of constructing and taking down plant. It is doubtful if we have all appreciated how much it has cost to take down plant even though the same may have appeared in good condition with a fairly high salvage value but a survey of the No. 9 sheets from the branches for the month of April, which month was not particularly heavy in removal activities, indicates that the absolute loss through the removal of plant amounted to $21,611. In addition to this item the Managers can readily appreciate the fact that it will cost an amount considerably in excess of the inventory figures to replace the footage lost. As judged by the experience

(Testimony of Mrs. Martha S. Montgomery)

of the last few months, the cost of securing a lease on an average (excluding Los Angeles) is in the neighborhood of thirty dollars. This represents only the activities of the Space Department. There, of course, must be added to this certain other overhead as well as automobile expense to get a figure which represents the total cost of obtaining the lease. In addition to the money which must be expended in obtaining the lease, there is an item which represents the first payment or advanced rental on a piece of property, so that the total amount of money expended in addition to the above in order to replace lost plant amounts to a figure somewhere between forty and fifty dollars per panel and the greatest part of this expenditure, of course, goes to expense. The branches are credited with only a conservative amount per foot to cover the actual building. Considering the entire expense which must be charged against lost plant which is replaced, it is doubtful if a panel of posting under ordinary conditions can be removed and be rebuilt without an absolute loss of thirty-five dollars and without an outlay of cash of over forty dollars considering the payment of advance rentals. The above figures are probably too low for some of the branches."

Foster and Kleiser Company's office bulletin No. 446, dated November 27, 1926, was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 2-O in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[Plaintiff's Exhibit No. 2-O.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
#446

San Francisco, Calif. Nov. 27, 1926.

Foster and Kleiser Company	
Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle.
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

RE: NATIONAL BUSINESS ON COMPETITIVE PLANTS

In order that we may take the fullest advantage of our New York Office we are asking that you kindly report to us all advertising of a National character which appears

(Testimony of Mrs. Martha S. Montgomery)

upon any plant other than our own operated in the territory under your jurisdiction. Through forwarding these reports to us promptly we will be in a position to have Mr. Everett contact the representative of the home office of the advertiser concerned and if possible arrange for the transfer of this business to us.

We believe that you will be well repaid for your effort in seeing that this information reaches us promptly.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Assistant General Manager.

WFT:IHO

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 2-O Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 156 dated December 3, 1923, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-P in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[Plaintiff's Exhibit No. 2-P.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 156.

San Francisco, Cal.,
DECEMBER 3, 1923.

Foster and Kleiser Company,

San Francisco,
Los Angeles,
Seattle,
Portland,
Oakland,
Tacoma,
Sacramento,
Long Beach,
Medford,

Wm. G. Fahy Co., Fresno.

Gentlemen: Re: Foster and Kleiser Company Policy Toward Agency Members of the Outdoor Advertising Bureau.

We are attaching the policy of this company with regard to its relation toward agency members of the Outdoor Advertising Bureau as outlined and written over the signature of Mr. Walter F. Foster.

(Testimony of Mrs. Martha S. Montgomery)

You will note that all information and contact by and between the agencies and the Foster and Kleiser Company is to be through the General Office of our company in San Francisco. Should there be any question as to any of the conditions of this statement by Mr. Foster or should there be any conditions which has come up in your contact with any agency which is not covered we will greatly appreciate your courtesy in promptly placing this matter before us in order that a proper ruling may be immediately made.

Kindly be so guided.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT*AP

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 2-P Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 368, dated October 14, 1925, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-Q in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[Plaintiff's Exhibit No. 2-Q.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 368.

San Francisco, Calif.
OCTOBER 14, 1925.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford,
Mr. Grant M. Smith	Oakland.
Mr. W. F. Foster	Mr. Noble Hamilton
Mr. Geo. W. Kleiser	Mr. S. Carman
Mr. A. F. Lausen, Jr.	Miss H. M. Salin.

(Testimony of Mrs. Martha S. Montgomery)

—Mr. W. F. Thompson
Mr. R. S. Montgomery
Mr. Albert Mortenson
Mr. R. A. Edwards
Mr. R. W. Olmsted
Mr. G. B. Haynes
Mr. A. W. Zamloch
Mr. E. R. Everett, New York Office.

Gentlemen: Re: Sales Letter #18 – Cancellable Posting Orders.

May we refer you to Sales Letter #18 written under date of September 24, 1925 over the signature of Mr. R. S. Montgomery, General Sales Manager.

The policy of 120 days cancellable period as a minimum on cancellable orders has been adopted by the General Outdoor Advertising Co., and covers the acceptance of business through its salesmen and through the National Outdoor Advertising Bureau whose business is cleared through the General Outdoor Advertising Co.

Sales Letter #18 refers primarily to our contacts with agency members of the Bureau and with accounts which will be cleared through the Bureau in order that the statements and representations of our salesmen will be the same as the stated policy of the source through which the business will come to us.

(Testimony of Mrs. Martha S. Montgomery)

There will be, however, exceptions to this stated policy even on orders received by us through the General Outdoor Advertising Co., where it would appear to them the part of wisdom to make such an exception. The purpose of this statement is that while it is to our advantage to do everything possible to make the 120 day minimum for cancellable orders universally accepted yet on business local to Foster and Kleiser Company good horse sense should rule and an occasional merited exception will perhaps save for us business which might otherwise be driven from our plants.

Let us make every effort consistent with good sensible business practice to fill up all our open posting space.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT*AP Ass't. General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 2-Q Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 439, dated October 8, 1926, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-R in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[Plaintiff's Exhibit No. 2-R.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#439

San Francisco, Calif. October 8, 1926

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: RE: COOPERATIVE CONTACT ACCOUNTS CLEARED THROUGH GENERAL OUTDOOR ADVERTISING COMPANY

For some little time we have been in correspondence with the New York Office of the General Outdoor Advertising Company on the subject of cooperative sales ac-

tivity in connection with orders received through their New York and Chicago Offices for execution on the plants of our company.

We are today in receipt of a letter from Mr. Everett of our New York Office with which is enclosed a letter from the General Outdoor Advertising Company of New York dated September 30, 1926 signed by Mr. W. D. Frey, outlining their plan of having their cooperative salesmen contact with local representatives of National advertisers not to exceed thirty days prior to the actual posting date of the different contracts and suggesting that we follow the same course on accounts that are cleared to us through the General Outdoor Advertising Company.

The General Outdoor Advertising Company's plan follows:

"The plan which we have now lined up is one which will call for contacting with the local representatives of national advertisers about thirty days prior to actual starting date of various contracts, and I believe that if your cooperative men work along the same lines that we will all be co-ordinating our activity in this respect. I am sure that by handling the matter in this way that there will be no objection to it as there was in the past through contracting immediately after the receipt of the orders by your branches."

(Testimony of Mrs. Martha S. Montgomery)

As you know, we discontinued contacting Western representatives of accounts whose orders were cleared to us through the General Outdoor Advertising Company some time ago due to complaints of these advertisers transmitted to us through the General Outdoor Advertising Company. It will now be in order for us to re-

Page 2 #439 October 8, 1926

sume this very valuable cooperative work with the understanding that our contact and the giving out of the information regarding orders received by us is not made and given prior to thirty days in advance of the actual posting date.

Kindly acknowledge receipt of this bulletin in order that we may know that its purpose is understood.

Very tuly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT/EB Assistant General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 2-R Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 353, dated August 7, 1925, together with copies of three letters attached thereto, were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-S in evidence, and are in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[Plaintiff's Exhibit No. 2-S.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 353

San Francisco, Cal.,
August 7, 1925

Foster and Kleiser Company

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
√Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: Subject: Service R. J. Reynolds Tobacco Company

Attached hereto you will find copy of a letter under date of July 22nd from the General Outdoor Advertising Company signed by Mr. K. H. Fulton, President, ad-

dressed to your branch, together with copy of a letter under date of July 24th signed by Mr. W. D. Frey, Manager of the National Service Division of the General Outdoor Advertising Company, addressed to the writer, and a copy of our reply to Mr. Frey under today's date.

Please make a survey of the R. J. Reynolds' display immediately and secure reapproval of it from the local representative of the R. J. Reynolds Tobacco Company. We would suggest that you list the entire display in triplicate and have the local representative approve over his signature each list. The lists should be in the same form as those which accompany the invoices. Retain one set for your files and send one to the General Outdoor Advertising Company, 550 West 57th Street, New York City, attention Mr. W. D. Frey, Manager National Service Division, accompanied by a letter signed by you as Branch Maanger, stating that in accordance with Mr. Frey's letter of July 24th, addressed to the writer, copy of which was sent you, you have had this survey made and that it has been approved by Mr. ....., representing the R. J. Reynolds Tobacco Company, as per lists attached; send the third set of lists to the General Office, San Francisco, attention of the writer, attached to a copy of your letter to Mr. Frey.

As Mr. Fulton has so pointedly stated in his letter of July 22nd, this account as a whole throughout the country is in jeopardy – a mighty serious state of affairs. However, we are depending upon each of our Branch Managers to show that he is absolutely in the clear and that the Reynolds Tobacco Company displays in his territory are intact and have the absolute approval of the local

representative of the R. J. Reynolds Tobacco Company.

This letter from Mr. Fulton, following as it does our experience with the Los Angeles Soap Company, about which we have written Bulletin No. 351, is a shock that cannot help but awaken every one in our organization to the fact that the advertisers are demanding the service which we have contracted to deliver, and that they will no longer tolerate inefficiency, carelessness or negligence on our part.

We must insist that each Branch Manager give this matter his personal attention, and that it be attended to at once so that both the General Outdoor Advertising Company and the General Office may be assured that the service being rendered to the R. J. Reynolds Tobacco Company throughout our entire territory is up to the minute and entirely satisfactory to the representatives of the R. J. Reynolds Tobacco Company.

Awaiting your very prompt reply and report, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen, Jr.

A. F. Lausen, Jr.

General Manager

AFL:IM

Bulletin 353 COPY Page 3

GENERAL OUTDOOR ADVERTISING CO.

New York City
July 22, 1925

Foster and Kleiser Co.,
Eddy St. at Pierce
San Francisco, Cal.

Dear Sir:

So grave a situation has arisen over the continued displacement of Camel panels that continuance of outdoor advertising by R. J. Reynolds Tobacco Company is being jeopardized.

Not only have some plant owners taken away from the Camel showing some of their choicest panels in favor of other advertisers – but have actually given these locations to competitors.

If this situation is not immediately remedied plant owners themselves may arbitrarily wipe outdoor advertising off this client's books.

Those who have allowed themselves for some reason or other to be so unfair to this advertiser must in decency – not only to R. J. Reynolds Tobacco Company but to

outdoor advertising as a medium as well – immediately replace all Camel panels that have been taken away from them without approval and given to other advertisers.

After this has been done, please get in touch with R. J. Reynolds Tobacco Company representative and see that he is satisfied with the Camel showing and that it is as good as any other advertiser's showing on your plant.

It passes comprehension why a great and consistent supporter of our national medium –for years a twelve-months advertiser – should be subjected to such unfair treatment. No other advertiser is entitled to a better showing; no other advertiser could deserve better treatment on any plant.

This letter is sent all plant owners. Those not at fault will understand there is no reflection intended.

To those who have displaced Camel panels we must insist that these showings are immediately and fully restored – and that this client receives the same relatively good treatment on every plant that any other advertiser is given. Also, that no changes are made in the future without the consent of R. J. Reynolds Tobacco Company representative.

Yours very truly,

K. H. Fulton (Signed)
President

COPY

GENERAL OUTDOOR ADVERTISING CO.

New York, N. Y.
July 24, 1925

Mr. A. F. Lausen, Jr.
Foster and Kleiser Company
Eddy Street at Pierce
San Francisco, California

Dear Gus:

You will find enclosed letters addressed to your various branches with reference to dissatisfaction on the part of the R. J. Reynolds Tobacco Company with the manner in which plant owners have arbitrarily made changes in their showing after the showing had been originally agreed upon between the plant owner and their representative.

While this may not apply to you, nevertheless there are many cases where it does apply and for this reason this

letter has been sent to all plant owners. My thought in sending all the letters to your branches to you is because I thought you might want to write all of your branches asking them to make a survey of the Reynolds display as agreed upon between your local branch manager and the Reynolds representative and, if the display is intact as agreed upon, write me to that effect, and in cases where any changes were not approved, please secure the approval of the Reynolds representative and write us regarding same.

We intend to follow this matter through for reply from all plants and will, therefore, appreciate it if you will follow the matter through on this basis.

With kind personal regards, I am

Very truly yours,

(Signed) W. D. Frey
Manager, National Service Division

COPY

AIRMAIL

San Francisco, Calif.
August 7, 1925

General Outdoor Advertising Company,
550 West 57th Street
New York City

Attention Mr. W. D. Frey, Manager
National Service Division

Dear Bill:--

Upon my return to San Francisco after an inspection trip through Southern California I found your letter of July 24th (it was held for my return) enclosing Mr. Fulton's letter of July 22nd, addressed to each of our branches, with reference to the R. J. Reynolds Tobacco Company's display.

I am glad you sent these letters to me instead of to the branches direct; while I am confident that the Camel displays throughout our entire territory are just as they have been approved of by the local representatives, nevertheless

(Testimony of Mrs. Martha S. Montgomery)

it gives me a very excellent opportunity to again impress upon our entire organization the great necessity and importance of protecting the interests of the R. J. Reynolds Tobacco Company as well as the interests of all other advertisers using the medium.

Of course you understand that because of the usual loss of locations it is necessary to provide new locations, but the approval of these new locations is always secured from the local representative of the R. J. Reynolds Tobacco Company.

Each Branch Manager will have a survey made of the Reynolds displays and will write you that the said displays have the full approval of the local representative of the Reynolds Tobacco Company.

Hoping that the cause which compelled Mr. Fulton to write his letter of July 22nd to all the plant owners throughout the United States will be remedied forthwith and forever, we are with kind personal regards

Yours very truly,

FOSTER AND KLEISER COMPANY

(Signed) A. F. Lausen, Jr.
General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 2-S Filed 1/10 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Mrs. Martha S. Montgomery)

Said exhibit was thereupon read to the jury.

MR. GLENSOR: I offer in evidence, for the limited purpose of tolling the statute of limitations, under instructions to be hereafter given, a certified copy of the original petition of the United States filed in the District Court of the United States for the Southern District of New York in the case of United States of America v. General Outdoor Advertising Company and others.

MR. CLARK: To which the defendant, Foster & Kleiser Company, objects on the ground that it is irrelevant and res inter alios acta, and not the way to prove the period of time during which that case was pending.

THE COURT: You better make your complete offer.

MR. GLENSOR: That one is complete, as far as that paper is concerned.

THE COURT: You have offered what, the record?

MR. GLENSOR: I have offered a certified copy of the original compaint.

THE COURT: All right, what next?

MR. GLENSOR: I offer in evidence a certified copy of the final decree entered in that case on the 7th day of May, 1929.

THE COURT: The same objection to that?

MR. CLARK: The same objection, and for the same reasons, with the further statement that there is no theory, under the statute or otherwise, which permits the admission of the decree for the purpose stated by counsel.

(Testimony of Mrs. Martha S. Montgomery)

THE COURT: Then, your further offer?

MR. GLENSOR: My further offer is a copy of the, or rather, the original record, which will be produced, it is not here now, in the case pending in this court for the same purpose, the complaint in the case of United States of America vs. Foster & Kleiser Company.

The Court: I suggest that you number that, if you have the number.

MR. GLENSOR: Yes, I will get the number, your Honor. It is Equity Case No. R-31-M.

The Court: Very well, together with the decree?

MR. GLENSOR: And the decree.

MR. CLARK: Well, I urge my objection against both of them together, they are both offered at one time?

MR. GLENSOR: Yes.

MR. CLARK: I object to them severally, to each of them severally, and to both of them, on the grounds I stated in my objection to the complaint in the G. O. A. case, that the matter is irrelevant and res inter alios acta, and on the further ground the introduction of it is precluded expressly by the language of the statute, and on the further ground it is not necessary, not the proper method of proving the period during which that action was pending; that is a matter the court takes judicial knowledge of. And I would like to add to my objection to the first and to the third items that the only possible effect the decree can have in that case, G. O. A. case, the only possible effect the complaint and the decree in that case can have is to prejudice the rights of the defendant, without having any advantage to the plaintiff at all, except as prejudicing the rights of the defendant.

(Testimony of Mrs. Martha S. Montgomery)

MR. STERRY: May I add to that objection, on the ground it is not competent or relevant for the reason any matters which he seeks to prove are matters within the knowledge or within the judicial notice of this court, and the court can take judicial notice of its own record, and therefore the offer is not in good faith, but in order to get matters which are highly incompetent and prejudicial to the rights of the defendants, before the jury.

THE COURT: Objections overruled.

MR. CLARK: Exception.

MR. STERRY: Exception.

MR. CLARK: I suppose each objection is overruled?

THE COURT: Yes.

MR. CLARK: And the record may show any exception to each ruling?

THE COURT: Yes, a separate exception to each ruling.

To which ruling of the court, and each of them, as to the admissibility of each and every one of the documents so offered by plaintiff, defendants, and each of them, duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 209.

The certified copy of the original petition in the case of United States of America v. General Outdoor Advertising Company was thereupon received in evidence and marked Plaintiff's Exhibit 218.

Said plaintiff's Exhibit 218 is in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 218.]

Due service of a copy of the within petition is hereby acknowledged. Dated New York, N. Y. July 23, 1928. Howe & Hurd Attys for General Outdoor Advertising Co., Inc.; Kerwin H. Fulton, George L. Johnson, George Armsby, individually and as Voting Trustees; E. Allen Scott Atty for Outdoor Advertising Association of America, Inc. D. D. Wein and E. F. Colladay, Attys for National Outdoor Advertising Bureau, Inc.

In Equity, No. E46-50

In the District Court of the United States in and for the Southern District of New York

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United States of America, petitioner

v.

General Outdoor Advertising Company, Inc., National Outdoor Adverising Bureau, Inc., Outdoor Advertising Association of America, Inc., Foster and Kleiser Company, Foster and Kleiser Investment Company, Kerwin H. Fulton, George Johnson, George Armsby, Individually and as Voting Trustees, and George W. Kleiser, defendants

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PETITION

CHARLES H. TUTTLE,
United States Attorney.

JOHN G. SARGENT,
Attorney General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.
RUSH H. WILLIAMSON,
HORACE R. LAMB,
Special Assistants to the Attorney General.

In the District Court of the United States in and for the Southern District of New York

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In Equity, No. —
United States of America, petitioner,

v.

General Outdoor Advertising Company, Inc., National Outdoor Advertising Bureau, Inc., Outdoor Advertising Association of America, Inc., Foster and Kleiser Company, Foster and Kleiser Investment Company, Kerwin H. Fulton, George Johnson, George Armsby, Individually and as Voting Trustees, and George W. Kleiser, defendants.

To the Honorable Judges of the District Court of the United States for the Southern District of New York, sitting in equity:

I

THE PARTIES

The petitioner, United States of America, by its attorney for the Southern District of New York, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against:

The General Outdoor Advertising Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter sometimes referred to as the "General Company"), and having an office at No. 1 Park Avenue, New York, N. Y.

The National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter sometimes referred to as the "Bureau"), and having its principal office at No. 1 Park Avenue, New York, N. Y.

The Outdoor Advertising Association of America, Inc., a membership corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter sometimes referred to as the "Association"), and having its principal office at No. 307 South Green Street, Chicago, Illinois.

Foster and Kleiser Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and having its principal office at No. 1675 Eddy Street, San Francisco, California.

Foster and Kleiser Investment Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal office at No. 1675 Eddy Street, San Francisco, California.

Kerwin H. Fulton, a citizen and resident of the State of New York, having his office at No. 1 Park Avenue, in the City of New York.

George A. Johnson, a citizen and resident of the State of New York, having his office at No. 1 Park Avenue, in the City of New York.

George Armsby, a citizen and resident of the State of New York, having his office at No. 24 Broad Street, in the City of New York.

George W. Kleiser, a citizen and resident of the State of California, having his office at No. 1675 Eddy Street, San Francisco, California.

and for its cause of action alleges on information and belief:

II

THE PURPOSE OF THE PETITION

This proceeding is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stat. 209), known as the "Sherman Antitrust Act," and Section 15 of the Act of Congress of October 15, 1914 (38 Stat. 730), as amended May 15, 1916, and May 26, 1920, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," known as the "Clayton Act," (1) to prevent and restrain all the defendants from further engaging in this district, and elsewhere in the United States, in violation of the provisions of Sections 1 and 2 of the said Act of Congress of July 2, 1890, and (2) to prevent and restrain the

defendant George W. Kleiser from violating the provisions of Section 8 of the said Act of Congress of October 15, 1914, as amended, all in the manner and by the means hereinafter alleged.

III
JURISDICTION AND DESCRIPTION OF THE COMMERCE RESTRAINED

The defendants herein are carrying on in this district and elsewhere in the United States a combination and conspiracy in restraint of interstate trade and commerce, and are monopolizing and attempting to monopolize such trade and commerce in the business of national outdoor advertising. This commerce includes two principal classes of activities: (1) the solicitation of contracts for national advertising, and (2) the operation of advertising display plants.

The solicitation of national outdoor advertising contracts involves (a) the preparation and submission to advertisers of advertising copy or designs for reproduction, either in print or in paint, on signboards, walls, or panels constructed for that purpose; (b) the procurement from lithographers and the submission to advertisers of estimates covering the cost of printing posters; (c) the procurement, primarily through the Association, from poster-plant and paint-plant operators, of statistical information concerning the location of poster-plants and paint-plants in the various towns and cities throughout the United States, as well as the charges for displays thereon, and the submission to prospective advertisers of estimates of the cost of displaying advertising matter on such plants;

(d) entering into contracts, either as principal or as agent for the advertisers, for the purchase of advertising posters pursuant to the copy or designs approved by the advertisers, and the subsequent transportation and delivery of the same in interstate commerce from the lithographer to the operators of poster-plants located in cities, towns and villages throughout the United States for posting on such poster-plants in accordance with the instructions of the advertiser; (e) causing the approved copy or designs for painted signs to be transported in interstate commerce from the office or studio of the solicitor to operators of paint-plants in the various cities and towns throughout the United States for reproduction on such paint-plants, in accordance with the advertisers' directions; (f) entering into contracts, either as principal or as agent for the advertisers, with operators of poster-plants and paint-plants, for the display of poster and painted advertising matter, which has been transported in interstate commerce, in accordance with the advertisers' instructions; (g) checking and inspecting the displays of advertising matter on the poster and paint-plants which have been selected by the advertisers or by the solicitors on their behalf; (h) making payment to the operators of the poster-plants and paint-plants for the use of their plants; and (i) finally collecting from the advertisers for all services rendered. Persons who solicit outdoor-advertising contracts and perform the activities outlined above are said to be engaged in operating an outdoor-advertising agency.

The operation of outdoor advertising display-plants includes the maintenance of two kinds of plants, (1) a poster-plant and (2) a paint-plant. A poster-plant con-

sists of a system of billboards or poster-panels (whether built as separate structures or attached to building-walls, fences, or other structures) under common ownership and used for the purpose of exhibiting thereon outdoor advertising posters or lithographs, which are transported in interstate commerce. The poster-boards or panels which are illuminated at night by electricity are called "specials." Non-illuminated boards or panels are called "regulars." For the purpose of contracting for advertising displays the poster-boards and panels are arranged in groups of substantially an equal number of "regulars" and "specials" distributed throughout a particular city, town, or village, designated a "showing." A "showing" is intended to provide an outdoor advertising display in substantially all places available in a particular city, town, or village for that purpose having advertising value. "Showings" are subdivided into "full", "half," or "quarter showings," depending upon whether the advertiser contracts for a display on all of the panels of a particular group of panels or a half or quarter thereof. A paint-plant consists of a system of one or more signboards, panels, or bulletin-boards (whether built as separate structures or attached to building-walls, fences, or other structures) under common ownership and used for the purpose of painting thereon designs or copy for outdoor advertising matter, which are transported in interstate commerce. Each separate board or panel is usually located at some conspicuous point near a public highway on which a large volume of traffic is continually passing. Frequently these painted boards or panels are illuminated at night. Usually contracts for painted displays are made for each separate board or panel.

The paper posters or lithographs and the designs or copy for painted advertising displays which are transported in interstate commerce are intended to, and do, convey information concerning the goods, wares, and merchandise of the advertiser to prospective buyers in all parts of the country; and the contracts entered into by advertisers and advertising agencies with plant operators engaged in national outdoor advertising are made for the purpose of having the information contained in such posters and designs transported in interstate commerce to the display-plants located in states other than that in which the advertiser, the advertising agency, or the manufacturer of the lithographs is located.

IV

DEFENDANTS' RELATION TO THE INTERSTATE COMMERCE WHICH IS AND HAS BEEN RESTRAINED AND MONOPOLIZED

The General Outdoor Advertising Company, Inc., is engaged in both the solicitation of national outdoor advertising and the operation of poster-plants and paint-plants. It maintains offices in the cities of New York, Chicago, Philadelphia, Cleveland, Detroit, Cincinnati, St. Louis, Kansas City, Minneapolis, Omaha, San Francisco, and other important cities throughout the United States. It operates poster and paint-plants in substantially all the larger cities, towns, and villages east of the Rocky Mountains. It is by far the largest single operator of display-plants in the United States, owning approximately 1,500 separate display-plants, located in at least twenty-three States and the District of Columbia. The poster and paint-plants which the General Company operates in the

larger cities and towns of the United States, commonly designated "key cities," are so essential to an advertiser desiring to contract for a national outdoor advertising campaign that it would be impossible for an advertiser to conduct such a campaign without contracting for these plants. The General Company, through the combination hereinafter alleged, controls approximately 80 per cent of the total national outdoor advertising business transacted in the United States.

Foster and Kleiser Company is also engaged in both the solicitation of national outdoor advertising and the operation of poster-plants and paint-plants. It maintains an office for the solicitation of contracts in San Francisco, California, and New York City, New York. It operates poster-plants and paint-plants in the States of Washington, Oregon, California, and Arizona.

Foster and Kleiser Investment Company is a personal investment holding corporation for defendant George W. Kleiser and one Walter F. Foster, each of whom owns one-half of its issued capital stock. Defendant George W. Kleiser and Mr. Walter F. Kleiser each own 54,342 shares and, together with the members of their respective families, own 416,490 shares, of a total of 588,945 shares of defendant Foster and Kleiser Company. Defendant Foster and Kleiser Investment Company owns 50,000 shares of common stock of defendant General Outdoor Advertising Company, Inc., which it acquired by the means and for the purposes hereinafter more fully alleged.

The National Outdoor Advertising Bureau, Inc., is engaged in the business of aiding and assisting its stockholders and others employing its services in soliciting and executing contracts for national outdoor advertising. The

stockholders of the Bureau, called "Bureau members," are engaged in conducting general advertising agencies, the activities of which include periodical advertising, as well as outdoor advertising. That part of the business of these stockholders and others employing the services of the Bureau which relates to outdoor advertising is under the direction and supervision of the Bureau, which maintains offices both in the City of New York, and in Chicago, Illinois. The "members" of the Bureau constitute practically all of the large general advertising agencies in the United States and have offices in all of the larger cities and towns throughout the country.

The Outdoor Advertising Association of America is a membership corporation, the members of which are divided into two classes: (1) the owners and operators of poster-plants, and (2) owners and operators of paint-plants. The memberships in the Association are designated by separate display-plants, located in separate cities, towns, and villages throughout the United States. There is only one membership for each separate city, town, or village. Voting in the affairs of the Association is according to the number of separate display-plants owned or operated by the voting member. There are 15,435 memberships representing poster-plants, and 207 memberships representing paint-plants. The two largest owners of memberships are (1) the defendant General Outdoor Advertising Company, Inc., which has 980 memberships, representing poster-plants which it owns and operates, and 89 memberships, representing paint-plants which it owns and operates, and (2) the defendant Foster and Kleiser Company, which has 576 memberships representing poster-plants which it owns and operates.

The Association functions under the dominance and control of these two defendants, especially the General Company, frequently to the prejudice or injury of other plant-owners who are endeavoring to conduct their business in competition with the General Company, as follows: The Association undertakes to compile statistical information concerning the number and location of the poster and paint-plants operated by its members, the number of panels constituting a "showing", and the charges for a "showing" of outdoor advertising matter on the members' plants. This statistical information is furnished national outdoor advertising solicitors on payment of fixed fees, and frequently only on compliance with unreasonable and arbitrary conditions imposed by the Association. The furnishing of this statistical information to such solicitors constitutes practically the sole means by which plant-owners, members of the Association, other than the General Outdoor Advertising Company, Inc., and Foster and Kleiser Company, may obtain contracts for the display of national outdoor advertising matter on their plants. Conversely, the statistical information obtained by national outdoor advertising solicitors from the Association furnishes practically the only means by which solicitors, other than the General Outdoor Advertising Company, Inc. and Foster and Kleiser Company, may obtain knowledge of the existence of poster-plant and paint-plant operators, with whom contracts for the display of national outdoor advertising matter may be made, and which knowledge is essential to the conduct of the solicitors' business.

In accepting statistical information from members to be furnished solicitors, the Association frequently undertakes to, and does, impose unreasonable, arbitrary, and

illegal restrictions, especially with reference to changes in allotments of the number of poster-panels constituting a "showing" on a member's poster-plant. In addition, the Association imposes unreasonable, arbitrary, and illegal conditions for membership, and delays taking action on applications for membership where the applicant operates a display-plant in competition with a member of the Association, in order to secure for existing members a monopoly of the outdoor advertising displays in the particular city, town, or village in which such member operates, and thus illegally prevents such applicant from obtaining contracts for national outdoor advertising displays through the facilities provided by the Association.

Kerwin H. Fulton is a director as well as the president and general manager of the General Company. He is also a director and member of the Executive Committee of the Association.

George A. Johnson is a director and chairman of the Board of the General Company. Prior to the formation of the General Outdoor Advertising Company he was vice-president of the Thomas Cusack Company, to which company reference is hereinafter made.

George Armsby is a director of the General Outdoor Advertising Company.

Defendants Fulton, Johnson, and Armsby constituted the Committee in charge of the Plan, hereinafter referred to, for the organization of the General Company.

Defendants Fulton, Johnson, and Armsby are also the voting trustees under a Voting Trust Agreement, dated as of February 26, 1925, hereinafter referred to, pursuant to the terms of which all of the issued common

stock of the General Outdoor Advertising Company is held and voted by them.

George Kleiser is a director as well as president of both the Foster and Kleiser Company and the Foster and Kleiser Investment Company. He is also a director of the General Outdoor Advertising Company, Inc., having been elected to such office by the means and for the purposes hereinafter more fully alleged.

V

THE UNLAWFUL MONOPOLY

A

FORMATION OF GENERAL ADVERTISING COMPANY, INC.

Prior to 1925 there were two principal groups of companies in the United States (exclusive of the Foster and Kleiser Company) engaged in soliciting national outdoor advertising and operating large poster-plants and paint-plants. These were (1) the so-called Thomas Cusack group, and (2) the so-called Fulton group.

(1) The Cusack Group

The principal company in the Cusack group was the Thomas Cusack Company, incorporated in 1903 under the laws of the state of New Jersey. Originally this company was engaged only in the operation of painted display advertising. In about 1908, however, this company acquired the poster-plants of the so-called Gunning System, which operated not only painted display advertising boards, but also operated poster-plants in the city of Chicago and

elsewhere, notably in Omaha, Nebraska, and Oklahoma City, Oklahoma. The Cusack Company gradually extended its ownership of both paint and poster-plants until during the period from 1918 to 1920 it attained such a dominant position in the advertising industry in the United States that it endeavored to control both the Association (in which it then had the largest number of memberships by reason of its extensive ownership of poster-plants and paint-plants) and the solicitors engaged in obtaining contracts for national advertising. In order to makes its monopoly effective, in 1920 the Cusack Company refused to accept contracts for national outdoor advertising matter to be displayed on its plants unless the contracts for such advertising were placed directly with it and without the intervention of competing solicitors. The Cusack Company and its subsidiary companies conducted soliciting offices and operated poster-plants in many of the principal cities of the United States, including New York City, Chicago, St. Louis, Kansas City, Omaha, Denver, New Orleans, Indianapolis, St. Joseph, Philadelphia, Buffalo, Rochester, Cleveland, Toledo, Dayton, Baltimore, Washington, D. C., Hartford, Memphis, Pittsburgh, Akron, Davenport, Duluth, Nashville, Youngstown, and Jacksonville, Florida. It also operated poster-plants and paint-plants in about 100 smaller cities throughout the United States. The subsidiary companies owned or controlled by the Cusack Company, constituting the Cusack group of companies, at the date of the formation of the General Outdoor Advertising Company, were as follows:

Name of company	State of incorporation
American Sign Co	Delaware.
American Posting Service	Illinois.
A. & W. Electric Sign Co	Ohio.
Atlanta Advertising Service	Georgia.
Aurora Bill Posting Co	Illinois.
Baltimore Poster Advertising Co	Delaware.

Name of company	State of incorporation
Block-Rogers Advertising Co	Maine.
The Bryan Co	Ohio.
W. E. Bryan Company	Indiana.
The Buchholz Co	Massachusetts.
The Carnegie Twelfth Company	Ohio.
Council Bluffs Poster Advertising Co	Iowa.
The Curran Billposting & Distributing Co	Colorado.
Garlick Poster Advertising Co	Louisiana.
Hartford Poster Advertising Co	Connecticut.
Indianapolis Billposting Co	Indiana.
Joliet Bill Posting Co	Illinois.
Kale & Bryan Co	Indiana.
Massengale Bulletin System	Georgia.
Morrison Posting Service	Illinois.
Mott, Jr., Bulletin System	Florida.
Northern Display Advertising Co	Minnesota.
North Shore Advertising Co	Illinois.
Thos. Cusack Co.—Oklahoma	Oklahoma.
Omaha Posting Service	Nebraska.
Philadelphia Posting Advertising Co	New Jersey.
Poster Display Company	Pennsylvania.

S. H. Robinson Company.....Pennsylvania.
Russell Posting Service.....Illinois.
Southern Advertising Co.....Alabama.
South Shore Advertising Co.....Indiana.
Tagney & Hudson Co.....Illinois.
U. S. Display Advertising Co.....Minnesota.
Western Bill Posting Co.....Illinois.

In addition to the soliciting and display facilities owned and operated directly by the Cusack Company or a subsidiary thereof, there was in existence a contractual arrangement between the Cusack Company and the Bureau (hereinafter more fully referred to) whereby the Cusack Company executed all of the contracts for national outdoor advertising obtained by the members of the Bureau.

As a result of the ownership and control of poster-plants and paint-plants, together with the contractual arrangement with the Bureau, in 1924 the Cusack group of companies constituted the largest outdoor advertising business in the world, transacting approximately 50 per cent of the total national outdoor advertising business of the entire United States.

(2) The Fulton Group

The original company in the so-called Fulton group was the Poster Advertising Company, Inc., organized under the laws of New York in 1917. Kerwin H. Fulton became the president of the Company shortly after its organization. This company was engaged solely in the business of soliciting national outdoor advertising. Associated with the Poster Advertising Company, Inc., was a group of companies, under the control of Kerwin H. Fulton,

either individually or as one of the executors of the Barney Link Estate, engaged in the operation of paint and poster-plants in various towns and cities chiefly in the Eastern part of the United States. Prior to the year 1920, in those cities and towns where the group of companies associated with the Poster Company did not operate poster or paint-plants, a large part of the contracts for national outdoor advertising obtained by the Poster Advertising Company, Inc., were executed on the poster and paint-plants operated by the Thomas Cusack Company and its subsidiaries. In 1920, with the refusal of the Cusack Company to accept further contracts for execution on its plants, which contracts had not been obtained by its own solicitors, or through its contract with the National Outdoor Advertising Bureau, Inc., the Poster Advertising Company, Inc., was unable to have its contracts for national advertising fully executed, unless it would submit to the domination of the industry by the Cusack Company and enter into contracts for the display of outdoor advertising matter through the agencies controlled by the Cusack Company. Other large solicitors for national outdoor advertising were in the same situation. Under the leadership of the Poster Company, defendant Fulton and others associated with him then began the development of a competing group of companies engaged in operating poster-plants and paint-plants, which companies, together with the companies then under the control of defendant Fulton, as aforesaid, known collectively as the Fulton group of companies, constituted the only companies in the outdoor advertising industry which were capable of competing with the group of companies controlled by the Cusack Company. The development

of the Fulton and associated companies continued under the direction and with the support of defendant Fulton, the Poster Advertising Company, Inc., and others, until in 1924 there were some 20 companies hereinafter named, actively engaged in operating poster-plants and paint-plants in competition with the so-called Cusack Companies, as well as elsewhere.

By reason of the strong position of the Fulton group of companies, particularly the Poster Advertising Company and others associated with it, this group of companies continued to prosper notwithstanding the attempted monopoly of the industry by the Cusack Company, until in 1924 it was transacting a substantial portion of the total national outdoor advertising business. The companies constituting the Fulton group of companies, at the date of the formation of the General Outdoor Advertising Company, were as follows:

Name of company	State of incorporation
Atlantic City Poster Advertising Company	New Jersey.
Binghamton Poster Advertising Company	New York.
Briel Poster Advertising Co., Inc	New York.
Brooklyn Poster Advertising Company	New York.
The Burton System, Inc	Virginia.
Capitol City Poster Advertising Co., Inc	Connecticut.
Dixie Poster Advertising Co., Inc	Virginia.
East St. Louis Posting Co	Illinois.
The O. J. Gude Co., of New York	New York.
Jamaica Poster Advertising Co., Inc	New York.
Long Island Poster Advertising Co., Inc	New York.
Mohawk Valley Poster Advertising Co., Inc.	New York.

Old Colony Poster Advertising Co.....
Pittsburgh Poster Advertising Co.....Pennsylvania.
Poster Advertising Co., Inc.....New York.
Quaker City Poster Advertising Co.....Pennsylvania.
Ripley Poster Advertising Co.....Georgia.
St. Louis Poster Advertising Co.....New York.
Standard Poster Advertising Co.....New York.
Van Buren & New York Bill Posting Company.....New York.

(3) Merger of 1925

Toward the end of 1924 the attempted monopoly by the Cusack Company having been unsuccessful and the Fulton group of companies, under the leadership of the Poster Advertising Company, having become a formidable competitor in the industry, negotiations were commenced by defendant George L. Johnson, then a vice-president of the Cusack Company, with defendant Fulton, through the intervention of Blair & Company, Bankers of New York, for the merger and consolidation of the businesses and properties of the Cusack and Fulton Companies. As a result of these negotiations there was promulgated under the direction of defendants Johnson, Fulton, and Armsby (representing Blair & Co., Inc.) as a committee, a plan and agreement, dated January 23, 1925, for the merger of the Cusack and Fulton Companies, as well as a number of other companies, not then included in either group. In March of 1925 the plan was declared operative, resulting in the formation of General Outdoor Advertising Company, Inc. (incorporated under the laws of New Jersey, February 7, 1925), which acquired and succeeded to all

the properties, businesses and good will of the former Cusack and Fulton groups of companies, the names of which have been stated herein above.

Subsequent to declaring the plan operative, and which resulted in the formation of General Outdoor Advertising Company, Inc., as herein alleged, this corporation was merged and consolidated with (1) Thomas Cusack Company, and (2) Atlantic City Poster Advertising Company, all being New Jersey corporations, by an agreement of consolidation and merger, dated as of December 1, 1925, although actually executed January 5, 1926. Furthermore, subsequent to declaring the plan operative, the General Company has acquired the properties, business, and good will of the following companies, as well as other companies, the names and locations of which are unknown to the petitioner.

Name of company	Location
Aultman, Inc.	Minneapolis and St. Paul.
National Poster Co. of Denver	Denver, Colorado.
Bolles Poster Advertising Co.	Southern New Jersey.
Outdoor Advertising Company	Akron, Ohio.
Dave Lodge Posting Company	Philadelphia, Pa.
New Orleans Poster Adv. Co.	New Orleans, La.
Jacksonville Poster Adv. Co.	Jacksonville, Fla.
Miami Poster Advertising Co.	Dayton, Ohio.
Memphis Poster Advertising Co.	Memphis, Tennessee.
Interstate Advertising Service	Omaha, Nebraska.
Omaha Outdoor Advertising Co.	Omaha, Nebraska.
Cedar Rapids Poster Adv. Co.	Cedar Rapids, Iowa.
Interstate Poster Adv. Company	Napoleon, Ohio.
Weber Poster Adv. Service, Inc.	Duluth, Minnesota.

Under the plan and agreement, dated January 23, 1925, for the merger of the Cusack and Fulton Companies to form the General Outdoor Advertising Company, Inc., as hereinbefore alleged, it was provided that the committee in charge of the said plan, consisting of defendants Johnson, Fulton, and Armsby, might by unanimous vote determine to place the common stock of the General Outdoor Advertising Company, Inc., in a voting trust, the trustees whereof should be selected by the committee, in which case voting trust certificates representing shares of such common stock would be deliverable under the plan in lieu of certificates for shares of common stock.

On the organization of the General Outdoor Advertising Company, Inc., provision was made in the certificate of incorporation for three classes of stock, namely, preferred stock, Class A stock, and common stock. Only the common stock has full voting rights. (Holders of the preferred stock and the Class A stock are not entitled to vote, except as provided by statute and except whenever the corporation is in default in the payment of dividends, as more fully provided in the certificate of incorporation.) Pursuant to the provisions of the plan and agreement, dated January 23, 1925, with respect to the common stock of the General Outdoor Advertising Company, Inc., immediately following the organization of the Company, as hereinbefore alleged, all of its common stock was issued to defendants Fulton, Johnson, and Armsby, as voting trustees under the terms of a Voting Trust Agreement, dated as of February 26, 1925, and these defendants issued their voting trust certificates, which are now outstanding in the hands of the public in lieu of certificates for shares of common stock. This Voting Trust Agree-

ment provides that it shall continue until February 26, 1930, unless sooner terminated by unanimous vote of the voting trustees. In the exercise of their power and authority as voting trustees, continuously since the organization of the defendant General Outdoor Advertising Company, Inc., defendants Fulton, Johnson, and Armsby have exercised and are now exercising all of the voting rights of the stockholders of the corporation and thus have controlled, and are now continuing to control, all of the affairs of the defendant General Outdoor Advertising Company, Inc.

B

THE RELATION BETWEEN THE GENERAL COMPANY AND THE NATIONAL BUREAU

At the time of the formation of the General Company there was in existence a contract between the Thomas Cusack Company and the National Bureau whereby all contracts for national outdoor advertising obtained by members of the Bureau were executed exclusively on the poster-plants and paint-plants of the Thomas Cusack Company and its subsidiary companies. In August, 1925, a new contract was made between the General Company and the Bureau, a true copy of which is annexed hereto, marked "Exhibit A," and made a part hereof. Under this contract, which is now in full force and effect, the Bureau was constituted the agent of the General Company to solicit contracts for national outdoor advertising to be executed upon the plants owned or operated by the General Company, and, at the option of the Bureau, to be executed upon plants not owned or operated by the General Company. The contract further provides that all ad-

vertising contracts procured or obtained by the Bureau to be performed by the General Company shall forthwith be assigned by the Bureau to the General Company. In the practical operation of this contract more than 90 per cent of all of the contracts for outdoor advertising obtained by the Bureau are assigned to the General Company.

In addition, the General Company and the Bureau have agreed in this contract not to compete in the solicitation of national advertising from specified advertisers, the names of which are appended to the contract, but which are changed from time to time by mutual agreement between the General Company and the Bureau.

With the exception of the General Company itself, the Bureau (including so-called members thereof) is the largest single agency in the United States for the solicitation of national outdoor advertising. The combined volume of business obtained by the General Company and the Bureau represents about 80 per cent of the total volume of national outdoor advertising business in the United States.

The contract between the General Company and the Bureau is now in operation and will continue for an indefinite period by virtue of the provision therein for automatic renewal until cancelled by written notice, and even on the giving of such written notice the contract shall not terminate until five years from the end of the year in which notice of a desire to terminate is given.

While the contract between the Bureau and the General Company remains in force, all of the stock of the Bureau is held by trustees under the terms of a so-called "option to Purchase Stock of National Outdoor Advertising Bureau, Inc.," a copy of which is annexed hereto, marked "Exhibit B," and made a part hereof.

C

THE RELATION BETWEEN THE GENERAL COMPANY AND THE OUTDOOR ASSOCIATION OF AMERICA, INC.

The General Company has the largest number of memberships in the Association and controls the largest number of votes in the conduct of the affairs of the Association. A large number of the officers of the Association are either officers or employees of the General Company. Kerwin H. Fulton is president of the General Company and chairman of the board of directors of the Association. Of the 27 directors of the Association, 6 are either officers or employees of the General Company. In 1926, at the instance and under the direction of the representatives of the General Company, a new constitution and set of by-laws was adopted by the Association, providing for more direct regulation of the affairs of the Association by the board of directors, the practical effect of which is to concentrate the control of the Association and its affairs in the hands of the General Outdoor Advertising Company, Inc., and its representaives.

D

THE RELATION BETWEEN THE GENERAL COMPANY AND FOSTER AND KLEISER COMPANY AND FOSTER AND KLEISER INVESTMENT COMPANY.

At the time of the formation of the General Outdoor Advertising Company, Inc., by the merger and consolidation of the so-called Cusack and Fulton Companies, as hereinbefore alleged, it was proposed by the committee in charge of the plan for the formation of the General Company that defendant Foster and Kleiser Company should be included among the companies whose business and properties were to be acquired by the General Company, and negotiations to that end were had with defendant George W. Kleiser, acting on behalf of defendant Foster and Kleiser Company. In the course of these negotiations, an appraisal was made of the physical properties, and an audit was made of the accounts of the Foster and Kleiser Company. Eventually, the committee and defendant George W. Kleiser determined that the Foster and Kleiser Company should not be actually included among the companies whose business and properties were to be acquired by the General Company, but that a community of interest should be established and maintained between the General Company and the Foster and Kleiser Company (1) by having defendant George W. Kleiser elected to the board of directors of the General Company, and (2) by having defendant Foster and Kleiser Investment Company (all of the stock of which is owner or controlled by defendant George W. Kleiser and Walter F. Foster or the members of their respective families) acquire a substantial number of the shares of stock to be issued by the General Company. Accordingly,

subsequent to the organization of the General Company, defendant George W. Kleiser was elected to the board of directors of the General Company, in violation of the provisions of Section 8 of the Clayton Act (more fully alleged hereinafter), and defendant Foster and Kleiser Investment Company agreed to purchase 50,000 shares of the common stock of the General Company. After the completion of the organization of the General Company, all of its common stock having been placed under a voting trust agreement, as hereinbefore alleged, there were issued to defendant Foster and Kleiser Investment Company voting trust certificates representing 50,000 shares of the common stock of the General Company, which voting trust certificates are now held by defendant Foster and Kleiser Investment Company. As a result of the establishment of the community of interest between the General Company and the Foster and Kleiser Company, as aforesaid, an understanding was reached between these two companies whereby substantial areas of territory were allocated in which each company would conduct the operation of its advertising display plants without competition by the other, that is to say, the Foster and Kleiser Company would conduct its business operations on the Pacific Coast and the territory west of the Rocky Mountains, and the General Company in the territory east of the Rocky Mountains, in each case without competition by the other.

All of the acts, contracts, understandings, and transactions and the combination hereinbefore alleged have been entered into and performed by these defendants with the intent and with the direct and necessary effect of restraining interstate trade and commerce in national outdoor advertising, and to monopolize and to attempt to monopolize such trade and commerce.

VII

RESULTS OF THE UNLAWFUL MONOPLY AND ATTEMPT TO MONOPOLIZE

As a result of the combination and conspiracy to restrain interstate trade and commerce in national outdoor advertising and to monopolize and attempt to monopolize such commerce, as hereinbefore alleged, in place of the active competition heretofore existing in the industry between the Cusack and Fulton groups of companies, there is now but one organization represented by defendant General Outdoor Advertising Company, Inc., which possesses power to control the entire industry, there being no other person, firm, or corporation engaged in the industry which is comparable to the General Company in size, or which is able to engage in free and unrestricted competition with the General Company. This power of the General Company has resulted, not from normal expansion and legitimate business enterprise, but from deliberate, calculated purchases and acquisitions of competing companies and by contracts and other arrangements intending to have and having the power to control the entire industry.

By virtue of the relation between the General Company and the Association, and between the General Company and the Foster and Kleiser Company, there is effected a control of approximately 90 per cent of the total poster-plants and paint-plants in the United States, located in cities, towns, and villages having a population of 10,000 people or more.

By reason of the fact that the General Company owns and operates the largest number of display-plants in the

United States, many of which are operated without competition in the so-called "key" cities, which are essential to a national outdoor advertising campaign, solicitors and advertising agencies competing with the General Company must necessarily enter into contracts with their largest and most important competitor (the General Company) in order to obtain execution of their clients' contracts.

In addition, as hereinbefore alleged, the Bureau assigns approximately 90 per cent of the contracts obtained by its members to the General Company to be executed. As a result of the contracts received from competing solicitors, advertising agencies, and members of the Bureau, as well as from its own direct solicitation, the General Company exercises a monopolistic control over the placing of contracts with operators of display-plants for the local display of advertising matter constituting parts of national outdoor advertising campaigns. In the cities, towns, and villages where the General Company does not operate its own display-plants, the so-called independent display-plant operators therein receive from the General Company, on the average, approximately 75 per cent of their total business, about one-half of which represents contracts which are sublet by the General Company, acting for competing solicitors, advertising agencies, and Bureau members, and is not the result of direct solicitation of business by the General Company. Accordingly, the monopolization by the defendant General Company of the poster and paint display-plants in key cities throughout the country, and over display-plants generally, as hereinbefore alleged, carries with it the power to control not only the so-called independent poster and paint display-plants in all parts of the country and the interstate trade

and commerce flowing thereto, but also gives the General Company the power to interfere with and restrain competing solicitors and advertising agencies in the conduct of their business in obtaining space on display-plants for the display of outdoor advertising matter on behalf of national advertisers.

The monopolistic power of the General Company, as aforesaid, has resulted and is resulting in a substantial decline in the volume of national outdoor advertising business transacted by competitors of the General Company, engaged both in the solicitation of national outdoor advertising and in the operation of poster-plants and paint-plants, which power, if continued, will result in the total suppression of competition in the industry, and the establishment of a complete and absolute monopoly in the General Company.

VIII

USES OF THE MONOPOLISTIC POWER

The power resulting from the unlawful combination and conspiracy, hereinbefore alleged, is being used (1) to oppress and coerce competitors of defendant General Outdoor Advertising Company, Inc., and with the intent to exclude them from the business of operating competing display-plants by outbidding them and unduly interfering with their procuring leases of locations for prospective or existing poster- and/or paint-panels; (2) to intimidate advertisers by threats of discrimination in service and to induce them by unfair representations and otherwise, not to deal with competitors of the defendant General Outdoor Advertising Company, Inc.; (3) to induce advertisers not to employ the services of solicitors in com-

petition with defendant General Outdoor Advertising Company, Inc., by granting secret rebates and by entering into arrangements for the formation of an advertising agency which in fact is merely a department of the business of the advertiser, whose business is thus obtained, and which is not a bona fide independent contractor engaged in soliciting national outdoor advertising, and by making unlawful discriminations in prices and services; (4) to control the defendant Outdoor Advertising Association and require it to limit the number of members in such Association so that there shall be but one poster-plant and one paint-plant membership in each city, town, or village of the United States, thus preventing potential and actual competitors of defendant General Outdoor Advertising Company, Inc., operators of local display-plants, from making use of the facilities provided by the Association to publish to advertisers statistical data concerning such local display-plants, which publication is essential to obtain contracts for local displays of large national outdoor advertising campaigns; (5) to control the Association and require it to withhold from solicitors in competition with defendant General Outdoor Advertising Company, Inc., or make it burdensome and unduly difficult for them to obtain from the Association the statistical information concerning display-plants of members of the Association, which is essential to the conduct of the solicitors' business, thus preventing such competing solicitors from using the facilities of the Association to employ the services of the display-plants of members of the Association; (6) to delay unjustly and unreasonably the delivery to the operators of display-plants in competition with defendant General Outdoor Advertising Company,

Inc., of contracts obtained by the Bureau members, providing for the employment of display-plants of competitors of the said General Company, but which in the course of transmission to such competitors have been assigned by the Bureau to the General Company, the delay in such delivery being made for the purpose of injuring competitors and to exclude them from interstate trade and commerce in national outdoor advertising by inducing the advertiser not to contract with such competitors; (7) to maintain prices at arbitrary levels and to enhance many of the prices charged for the use by advertisers of poster and/or display-plants above the prices charged for the use of such plants prior to their acquisition by defendant General Outdoor Advertising Company, Inc.; (8) to injure competitors of defendant General Outdoor Advertising Company, Inc., engaged in the operation of poster and paint display-plants with the intent to exclude them as competitors by threatening national advertisers that unless their contracts for national outdoor advertising displays are executed on the poster and/or paint-plants owned and operated by the General Company and/or its subsidiary or affiliated companies, and not on the plants of competitors, where such competition exists, the General Company will refuse to accept contracts from advertisers for execution on any of the plants owned and/or operated by it and/or its subsidiary and affiliated companies; (9) to compel owners and operators of so-called independent display-plants to sell their display-plants to, or exchange the same with, the General Company on such terms and conditions as may be determined by the General Company, by threatening, either expressly or impliedly, that unless such sale or exchange is made, the General Com-

pany will construct and operate a display-plant in competition with the display-plants of such so-called independent operators, or prevent them from receiving contracts for local outdoor advertising displays, being parts of large national outdoor advertising campaigns, in which the subletting of contracts for local displays is under the control of the General Company; and (10) to control the so-called independent operators of display plants throughout the United States, many of whom are members of the Association, and thus interfere with competing solicitors, by making such so-called independent operators subservient to the wishes of the General Company in their dealings with advertisers, and with solicitors and advertising agencies who are engaged in competition with the General Company, by virtue of the large volume of sublet business which such independent display-plant operators receive from the General Company.

IX

EXTENSION OF THE MONOPOLY POWER

Since the organization of the General Outdoor Advertising Company, Inc., in 1925 by the merger of the Cusack group of companies and the Fulton group of companies, as hereinbefore alleged, this defendant has owned and operated a poster-plant and a paint-plant in the city of Baltimore, Maryland, and in the territory surrounding that city (hereinafter sometimes collectively called "the Baltimore plant"), which, prior to the organization of the General Company, was owned and operated by the Cusack Company or one of its subsidiary corporations. At the present time and continuously for several years prior to the acquisition of the Baltimore plant by defendant

General Outdoor Advertising Company, Inc., the P. & H. Morton Advertising Company, a Maryland corporation, has owned and operated a poster-plant and paint-plant in the city of Baltimore, Maryland, and in the surrounding territory, including Annapolis, Maryland, Cumberland, Maryland; Washington, D. C.; and Alexandria, Virginia (hereinafter sometimes collectively called "the Morton plant"). Continuously since the acquisition of the Baltimore plant by the General Company, defendant General Company and the P. & H. Morton Company have been and now are engaged in active competition in the business of national outdoor advertising. In the course of this competition defendant General Outdoor Advertising Company, Inc., its officers, agents, and employees, have used the monopolistic power hereinbefore described and employed many of the unfair practices hereinbefore alleged, with the intent to injure the P. & H. Morton Company in the conduct of its national outdoor advertising business, and to exclude this company and the Morton plant as a competitor. The effect of the unlawful use by defendant General Company, its officers, agents, and employees of its monopolistic power against the Morton Company, as aforesaid, has been to cause the Morton Company to suffer losses of business, and it has been unlawfully restrained and interfered with in the conduct of its business, which, if continued, will cause the Morton Company to discontinue its national outdoor advertising business.

At frequent intervals during the past year or more, prior to the filing of this petition, defendant General Company has made offers to the Morton Company to purchase the outdoor advertising business conducted by it in com-

petition with the General Company, including the Morton plant. Concurrently with the making of these offers of purchase, defendant General Company, by its executive officers, has threatened the president of the Morton Company that unless the Morton Company would agree to sell its business and plant to the General Company the General Company would put the Morton Company out of business.

As a result of these offers and threats on the part of the officers of the General Company, the stockholders of the Morton Company have finally been compelled to agree to sell its business and the Morton plant to the defendant General Company, believing that it will be impossible to continue successfully the outdoor advertising business now conducted by the Morton Company, by reason of the continued threats and unlawful uses of the monopolistic power on the part of the General Company, as hereinbefore alleged. Accordingly, under date of November 22, 1927, defendant General Company and Henry Morton, of Baltimore, Maryland, as the representative of the owners of all of the outstanding capital stock of the Morton Company, entered into a contract, a copy of which, marked "Exhibit C," is annexed hereto and made a part hereof, whereby the said Henry Morton agreed to cause the business and assets of the Morton Company, including the Morton plant, to be conveyed to the General Company on the terms and on the conditions set forth in the said contract annexed hereto, such conditions, among others, being that neither Henry Morton nor the Morton Company will engage in the outdoor advertising business in the State of Maryland, the District of Columbia, and in Alexandria, Virginia, following the delivery of instruments of transfer, in accordance with the terms of the

said contract, excepting only as Henry Morton might engage in business in this territory in connection with the business of the defendant General Outdoor Advertising Company, Inc.

Defendant General Company has entered into the contract, dated November 22, 1927, for the acquisition of the business and assets of the Morton Company, with the intent and for the purpose of extending its monopolistic control of the outdoor advertising industry, and to secure to itself the more absolute power of directing and thus restraining interstate trade and commerce in the business of national outdoor advertising, as hereinbefore described, and to obtain absolute control of the display of national outdoor advertising matter in the city of Baltimore and the territory surrounding that city, which is essential to national outdoor advertisers in placing their advertising matter before the public of the United States. Petitioner further alleges that unless the proposed acquisition by defendant General Company of the business and property of the Morton Company in the city of Baltimore, Maryland, and the surrounding territory, is enjoined by this court, the monopolistic power in the outdoor advertising industry now held by defendant General Company and the other parties to the unlawful combination, as hereinbefore alleged, will be further extended, contrary to law.

In addition to the making of the contract for the acquisition of the business and property of the P. & H. Morton Company as aforesaid, defendant General Company has acquired additional display plants in Indianapolis, Indiana; Kansas City, Missouri; Dayton, Ohio; Memphis, Tennessee; Rome, Georgia; and Birmingham, Alabama, as well as in other places, the names of which are unknown

to this petitioner, each acquisition having been made for the purpose and with the effect of extending its monopolistic control over the outdoor advertising industry.

Defendant General Company is acquiring and intends to acquire other display-plants now in existence and is constructing and intends to construct additional display-plants, the names and locations of which are unknown to your petitioner, for the purpose and with the effect of excluding competitors and extending further its monopolistic control. Unless the defendant, General Company, is enjoined by this court from making such acquisitions and constructing such additional display-plants, this defendant will continue to extend its monopolistic control until eventually all competition in the operation of display-plants and in the interstate trade and commerce flowing thereto shall be entirely eliminated.

X

VIOLATION OF SECTION 8 OF THE CLAYTON ACT

In June, 1925, defendant George W. Kleiser, then being a director of defendant Foster and Kleiser Company, was elected to the board of directors of defendant General Outdoor Advertising Company, Inc., and he is now serving as a director of that company, and of the Foster and Kleiser Company. The capital, surplus, and undivided profits (exclusive of dividends declared, but not paid to stockholders) of the defendant General Outdoor Advertising Company, Inc., and of the defendant Foster and Kleiser Company, at the end of the fiscal year of each of said defendants next preceding the election of the said defendant Kleiser to the board of directors of the General

Outdoor Advertising Company, Inc., did aggregate and continuously since that date have aggregated more than one million dollars. The defendants, General Outdoor Advertising Company and Foster and Kleiser Company, are engaged in interstate and foreign trade and commerce in national outdoor advertising, as hereinbefore alleged, and by virtue of their businesses and the location of their respective operations, have been, now are, and but for the unlawful acts herein complained of, would now continue to be competitors, so that the elimination of competition by agreement between them would constitute, and in fact does constitute, a violation of the provisions of the Antitrust Laws of the United States. The election of the said defendant George W. Kleiser to the board of directors of the General Company, as aforesaid, is in violation of Section 8 of the Act of Congress of October 15, 1914, as amended May 15, 1916, and May 26, 1920, commonly called the Clayton Act.

PRAYER FOR RELIEF

Wherefore your petitioner prays:

That writs of subpoena issue directed to each and every of the defendants commanding them to appear and answer, but not under oath (answer under oath being hereby expressly waived) the allegations contained in this petition and to abide by and perform such orders and decrees as the court may make in the premises;

That this court order, adjudge, and decree:

I .That the combination and conspiracy to restrain interstate trade and commerce, and to monopolize and attempt to monopolize such commerce, as described in

the petition herein, be declared illegal and in violation of the Act of Congress of July 2, 1890 (26 Stat. 209) commonly called the Sherman Act, and the Acts amendatory thereof, and supplemental or additional thereto.

II. That the defendants and each of them, and each and all of their respective officers (in the case of corporate defendants), agents, employees, and all persons acting or claiming to act on behalf of them, or any of them, be enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described herein, and from entering into, or performing, either directly or indirectly, expressly or impliedly, a similar combination.

III. That this court order, adjudge and decree that the defendant, General Outdoor Advertising Company, Inc., in and of itself is an illegal combination and an unlawful monopoly and attempt to monopolize interstate trade and commerce in outdoor advertising, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890 (26 Stat. 209), commonly called the Sherman Act, and that it be dissolved either entirely or in such separate parts and under such terms and conditions and within such period of time and under such directions as to this court may be just and fitting in the premises.

IV. That in the event, after hearing this cause, the court determines not to order, adjudge, and decree the dissolution of defendant, General Outdoor Advertising Company, Inc., as prayed for herein, then, in the alternative, this court order, adjudge, and decree as follows:

(1.) That the contract dated August 24, 1925, a copy of which is annexed hereto and marked "Exhibit A," en-

tered into and now existing between the General Company and the Bureau, be declared illegal and null and void, and that the General Company and the Bureau be perpetually enjoined, directly or indirectly, expressly or impliedly, from further carrying out this agreement; or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts.

(2.) That the several agreements designated "Option to Purchase Stock of National Outdoor Advertising Bureau, Inc.," a copy of the form of which is annexed hereto and marked "Exhibit B," entered into by George C. Sherman, Frederick J. Ross, and William D. McJunkin, as trustees for the Bureau and each stockholder of the Bureau, be declared null and void, and the Bureau and its trustees named in the option agreement, and each of them, be perpetually enjoined from carrying out the so-called option agreement, or from entering into or performing any similar agreement or agreements.

(3.) That within such time after the hearing of this cause as the court may determine, the General Company be perpetually enjoined from entering into or performing any contract or contracts for outdoor advertising displays to be executed on display plans owned or operated by persons other than the General Company, excepting only such contracts as are entered into directly with the General Company by the advertiser or advertisers for whom such contracts are to be executed.

(4.) That the Bureau be perpetually enjoined from giving or granting any preference, priority, rebate, or discrimination, in any form whatsoever, to, or in favor of, the General Company, in connection with any contract or contracts for outdoor advertising displays; or from interfering in any manner whatsoever with the selection of display-plants which have been made by Bureau members, or other persons employing its services in their several contracts for outdoor advertising displays, or from changing or refusing to comply with the instructions of such members, or other persons, with respect to the selection of the particular display-plant or display-plants on which such contracts are to be executed.

(5.) That the General Company be perpetually enjoined and restrained from doing, either directly or indirectly, any or all of the following acts:

(a) Giving or granting any preference, priority, rebate, or any illegal discrimination, in any form whatsoever, to, in favor of, or against the Bureau or any member thereof or any person employing the services of the Bureau, or any other person, in connection with any contract or contracts for outdoor advertising displays.

(b) Refusing or failing to furnish or to sell advertising space on the display-plants owned or operated by the General Company, or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays.

(c) Requiring or attempting to require, any person or persons to purchase, or agree to purchase, space on, or to use, or to agree to use, the display-plants of the General Company, or to employ, or to agree to employ, its services, in any place or places where the General Company operates display-plants or furnishes services in competition with competitors, in preference to the display-plants or the services of a competitor, as a condition to the making of a contract with such person or persons for the purchase of space on, or the use of, display-plants of the General Company, or the employment of its services in other localities.

(d) Inducing, or attempting to induce, advertisers not to employ, or to discontinue the employment of, the services of competing solicitors by granting secret rebates, or by entering into any arrangement for the formation of an advertising agency which in fact is a department of the business of an advertiser, or by making discriminations in price or service, where the purpose or the effect thereof is or may be to substantially lessen competition or tend to create a monopoly in the outdoor advertising business; provided, however, that the relief granted pursuant to this prayer shall not prevent the General Company from making discriminations in price between purchasers or users of space or employers of service on account of differences in grade, quality, or quantity thereof, or that makes due allowance for difference in the cost of selling or transportation, or discriminations in price in the same or different communities made in good faith to meet competition, or from selecting its own customers in bona fide transactions, and not in restraint of the outdoor advertising business.

(e) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the General Company and in part on display plants owned and/or operated by persons other than the General Company, that the General Company shall sublet the part or parts of such contracts to be executed on the display plants owned and/or operated by persons other than the General Company.

(f) Knowingly and falsely representing to persons that the quality of the services rendered, or to be rendered, by Competitors of the General Company, whether display-plant operators or solicitors, is, or will be, inferior to the quality of the services rendered, or to be rendered, by the General Company, where the purpose or effect thereof is, or will be, to induce such persons not to purchase space on, or to use the display-plants of, or employ the services of, such competitors of the General Company.

(g) Adopting or carrying out a practice, either generally or with respect to any particular community, of interfering with competitors, operators of display plants, with the purpose or knowingly with the effect of excluding such competitors from carrying on their regular course of business by (1) making unreasonable and exorbitant offers for locations for prospective and/or existing poster and/or paint display-boards or panels, or (2) with the intent to so exclude by building display-boards or panels immediately in front of the display-boards or panels of competitors or immediately in front of sites known to be held by competitors for prospective display-boards or panels, or (3) by employing any direct physical means

which prevents the construction, maintenance, or operation of such competing display-plant.

(h) Constructing any additional display-plant or display-plants) (except by way of replacement of an existing plant now owned by the General Company), where the purpose of constructing such additional display-plant or display-plants is primarily to exclude the owner or operator of an existing display-plant from engaging in, or continuing to engage in, the business of displaying national outdoor advertising matter.

(i) Acquiring the ownership or control of any additional display-plant or display-plants, whether now in existence or which may hereafter come into existence, where the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly in the ownership, control or operation of display-plants, either in a particular locality or generally throughout the United States or a section thereof.

(6.) That the General Company and Foster and Kleiser be perpetually enjoined and restrained from entering into or executing any contract, agreement, or understanding, either directly or indirectly, expressly or impliedly, concerning the division or allocation of the respective territory or territories, or place or places in which these corporations, or either of them, shall or shall not engage in the business of owning or operating outdoor advertising poster or paint-plants, or in which these corporations or either of them shall or shall not engage in the business of soliciting contracts for outdoor advertising; provided, however, that the relief granted under this prayer shall not prevent either Foster and Kleiser or the General Com-

pany from purchasing advertising space on the poster or paint-plants owned or operated by the other, whenever such purchase is necessary in connection with the performance of contracts for outdoor advertising displays procured by either of these defendants in the usual course of its business.

(7.) That, subject to the proviso contained in paragraph (6.) of this alternative prayer, the General Company, Foster and Kleiser, the Association, and the Bureau be, jointly and severally, perpetually enjoined and restrained from entering into or executing any contract, agreement, or understanding, either directly or indirectly, expressly or impliedly, fixing prices for the use of the outdoor advertising poster or paint-plants or any part or parts thereof, owned, controlled, and/or operated by any of the said defendants.

(8.) That the election of George W. Kleiser as a member of the board of directors of the General Company be declared a violation of Section 8 of the Act of Congress of October 15, 1914; that forthwith the said George W. Kleiser resign his office as a director of the said General Company; that the said George W. Kleiser be perpetually enjoined from accepting office as a director of the said General Company while he shall hold office as a director of Foster and Kleiser, or of any other corporation with which the General Company is, or may be, in competition in the outdoor advertising business.

(9.) That within such time as may be fixed by the court after the termination of the voting trust agreement dated February 26, 1925, as hereinafter prayed, under which the shares of the issued common stock of the General Company are now held, defendant Foster and

Kleiser Investment Company be ordered and directed to dispose of either the 50,000 shares of the common stock of the General Company owned by it, or the voting trust certificates representing such stock now held by it, so that the community of interest now existing between defendant Foster and Kleiser Investment Company, defendant Foster and Kleiser Company, and the General Company, by virtue of the ownership of the said stock or the voting trust certificates representing it, shall be permanently discontinued, and that the said Foster and Kleiser Investment Company, the Foster and Kleiser Company, and each and all of their respective officers, agents, and employees and all persons acting or claiming to act on behalf of them or either of them, be perpetually enjoined from acquiring any shares of stock in the General Company or any voting trust certificates representing the same, for the purpose or with the effect of establishing a community of interest between the Foster and Kleiser Company and the General Company, in connection with the conduct of their respective businesses in outdoor advertising; provided, however, that after the termination of the voting trust agreement dated February 26, 1925, and before the disposition of the 50,000 shares of common stock of the General Company shall have been made, as herein prayed, defendant Foster and Kleiser Investment Company shall not exercise any voting rights or make any other use whatsoever of the said 50,000 shares of common stock of the General Company by which the community of interest between the General Company and the Foster and Kleiser Company may be continued pending the final disposition of the said 50,000 shares of common stock, as herein prayed, or at any time subsequent thereto.

(10.) That within such time after hearing and determining this cause as the court may fix, the defendants Kerwin H. Fulton, George L. Johnson and George Armsby, individually and voting as trustees, be ordered and directed to cause the Voting Trust Agreement, dated as of February 26, 1925, referred to in the petition herein, to be terminated; and after the expiration of the period of time fixed by the court these defendants and each of them be enjoined from further performing this Voting Trust Agreement, either directly or indirectly, or from doing any act pursuant thereto, excepting only the transfer and delivery of certificates representing the shares of common stock in the General Company to such persons as are entitled to receive the same in exchange for voting trust certificates now issued and outstanding; and that the General Company and the defendants Kerwin H. Fulton, George L. Johnson and George Armsby, and each of them, be enjoined for a such period as the court may fix from entering into or performing any agreement similar to the Voting Trust Agreement, dated as of February 26, 1925.

(11.) That the contract dated November 22, 1927 referred to in the petition herein, entered into and now existing between the General Company and Henry Morton, as the representatives of the owners of all of the outstanding capital stock of the P. & H. Morton Advertising Company, a Maryland corporation having its principal office at Baltimore, Maryland, be declared illegal and null and void, and that the General Company be perpetually enjoined, directly or indirectly, expressly or impliedly, from carrying out this agreement, or doing or performing any acts pursuant thereto, or in accord-

ance therewith, or from entering into or performing any similar agreement.

V. That within such period after hearing and determining this cause as the court may fix, the Association be ordered and directed to submit to this Court a proposed plan for the reorganization of the administration of the affairs of the Association, which shall include the following provisions:

(a) That membership and voting rights in the Association shall be granted, within a reasonable time after proper application, considered in the order filed, without discrimination, to all reputable persons, firms or corporations who are engaged in the business of owning and/or operating outdoor advertising display-plants which conform to a reasonable standard of minimum requirements as to plant construction, operation, and coverage according to circulation of population, and who (1) shall conform to a reasonable and lawful code of ethics or standards of business practices adopted by the Association, (2) shall pay annually reasonable dues, (3) shall register currently with the Association statistical information concerning each separate display-plant now owned or operated, or which may hereafter be owned or operated by such member, including the price fixed by each individual member for the use of each of his display-plants, according to cities, towns, villages or other local political subdivisions. and (4) shall pay annually reasonable registration fees, without discrimination, in connection with the registration of each separate display-plant, and in determining the amount of such fees consideration shall be given primarily to the services actually rendered by the Association.

(b) That membership and voting rights shall be irrespective and independent of ownership, control, or location of any specified number of display-plants; provided, however, that in the national association the directors may be elected by geographical districts, and in voting for such directors according to districts, each member may cast one vote in each district in which such member is a bona fide operator of a display-plant; but provided always that not more than one director shall be elected who is an officer, agent, or employee of, or is associated with, a particular member.

(c) That the number of members shall not be arbitrarily restricted to any specified number of members for each city, town, village, or other local political subdivision.

(d) That the statistical information concerning the display-plants registered by each member shall be made available by the Association to all reputable advertising solicitors, and all other persons who, either as principal or agent, desire to purchase outdoor advertising space, or to employ the services of members in connection with outdoor advertising, on payment of reasonable charges therefor, but without arbitrary discrimination or selection, and without the imposition of any restriction with reference to the number of persons who may receive such statistical information.

(e) That changes in the prices fixed by each individual member for the use of his separate display-plant or display-plants, or the employment of his separate services may be made at any time by each individual member without giving prior notice of such change to the Association; provided that after a

change in price has been made by a member, and notice thereof is given the Association, information of such change shall immediately be furnished to advertising solicitors and all persons entitled to receive the statistical information furnished by the Association, under the provisions of paragraph (d) hereof.

(f) That changes in allotments which constitute a showing of advertising matter on a particular display-plant of a member in accordance with the minimum requirements of the Association as to coverage according to circulation of population (which is included in the statistical information furnished by members to the Association) may be made by such member at any time; provided that, in the interest of promoting trade and commerce in the outdoor advertising industry through the facilities afforded by the Association in gathering and disseminating statistical information concerning poster-plants of members, including information as to allotments, reasonable notice of such changes in allotments shall be furnished the Association by members in advance of the date on which such change in allotments is to be made effective by such member, which notice of change in allotments shall immediately be furnished by the Association to advertising solicitors and all persons entitled to receive the statistical information furnished by the Association under the provisions of paragraph (d) hereof, to enable them to make reasonable use thereof in preparing estimates of the cost of outdoor advertising displays in advance of entering into contracts with advertisers on behalf of individual members of the Association.

VI. That the terms of the decree prayed for herein shall be binding upon and shall extend to each and every

one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, co-partnerships, and/or individuals who may hereafter acquire ownership or control, directly or indirectly, of the stock or of the property, business, and good will of any of the corporate defendants, whether by merger, consolidation, reorganization, transfer of assets, or otherwise.

VII. That the court retain jurisdiction of this cause for the following purposes: (a) Enforcing this decree, (b) enabling the petitioner to apply to the court for a modification or enlargement of any provisions of this decree on the ground that the decree is inadequate, or (c) enabling the defendants or any of them to apply for a modification of any of the provisions of this decree on the ground that they have become inappropriate or unnecessary.

VIII. That the petitioner have such other, further, and different relief as may be necessary and the court may deem proper in the premises.

IX. That the petitioner recover its taxable costs.

UNITED STATES OF AMERICA,
Charles H Tuttle
United States Attorney.

Under the direction of—
John G. Sargent
Attorney General.

William J. Donovan
Assistant to the Attorney General.

Rush H. Williamson
Horace R. Lamb
Special Assistants to the Attorney General.

EXHIBIT "A"

Memorandum of Agreement Between National Outdoor Advertising Bureau, Inc., and General Outdoor Advertising Co., Inc., Dated August 24, 1925

This contract, made this 24th day of August, 1925, by and between General Outdoor Advertising Co., Inc., a New Jersey corporation (hereinafter called "the Com,-pany"), party of the first part, and National Outdoor Advertising Bureau, Inc., a New York corporation (hereinafter called "the Bureau"), party of the second part:

Witnesseth

That for and in consideration of the mutual covenants hereinafter contained and of the sum of One Dollar and other good and valuable considerations, by each of the parties to the other paid, receipt whereof is hereby acknowledged, the parties hereto do agree with each other as follows:

I. The Company hereby authorizes the Bureau, upon the terms and subject to the limitations hereinafter expressed, to solicit contracts for outdoor advertising to be executed upon outdoor advertising plants owned and/or operated by the Company and, at the option of the Bureau, to solicit such contracts to be executed upon such plants not owned and/or operated by the Company. For the purpose aforesaid, but for no other purpose, and subject always to the terms and limitations expressed in this contract, the Bureau shall be deemed to and shall be the agent of the Company.

II. The Company shall forthwith furnish to the Bureau a complete memorandum of the standard or card

rates applicable to that portion of the display advertising plants and bulletins owned and/or operated by the Company with respect to which standard or card rates have been established. If the Company shall at any time make any change and/or changes in the said standard or card rates, the Company shall notify the Bureau of such change and/or changes at least thirty days prior to the date upon which the same shall become effective and not later than the Company shall give notice thereof to any soliciting unit other than the Bureau, including its own direct sales organization.

The Company shall also from time to time furnish to the Bureau full information regarding the painted and electric display bulletins owned and/or operated by the Company with respect to which no standard or card rates shall have been established and of all special rates or terms upon which such bulletins may be offered to advertisers, and shall furnish to the Bureau copies of all bulletins of rate space and service information prepared by the Company for the use of its own direct sales organization and/or any other soliciting unit.

The Company shall also from time to time furnish to the Bureau full information at the time possessed by the Company regarding outdoor advertising plants other than those owned and/or operated by the Company, and in all its transactions with any such plant and/or plants with respect to the Bureau business, the Company shall observe the same care and endeavor to obtain the same service as in connection with business developed by its own direct sales organization.

It is the intention and purpose of this article of this contract that the Bureau shall at all times have available

to it for the purposes of its solicitation under this contract, full, accurate, and current information regarding the outdoor advertising plants owned and/or operated by the Company and of the terms, both standard and special, if any, which at the time may be offered to advertisers, and that the position of the Bureau in this repect shall be fully as favorable as that of the Company's own direct sales organization; further, that the Company shall cooperate in every way with the Bureau in its effort to secure full recognition as a solicitor from all the owners of outdoor adver*t*sing plants and/or the Poster Advertising Association to the end that the Bureau may secure from all currently standard commissions, terms, and facilities.

All contracts procured by the Bureau to be carried out upon plants owned and/or operated by the Company shall be at rates established by the Company, whether standard or special, and no allowance, rebate, adjustment, concession, cut-rate, and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made and/or allowed by the Bureau and/or by the advertising agency or person connected and/or affiliated therewith. Similarly, all contracts obtained by the Company by direct solicitation shall be at the Company's current rates, standard or special, and no allowance, rebate, adjustment, concession, cut-rate, and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made or allowed by the Company. The Company shall also use its best endeavors to see that the aforesaid practice is followed by all solicitors of outdoor advertising with respect to all contracts to be performed upon plants owned and/or operated by the Company.

III. All advertising contracts procured and/or obtained by the Bureau shall be subject to the written acceptance thereof by the Company, signed by an officer of the Company duly authorized. The action and policy of the Company with respect to acceptance of all such contracts shall be in accordance with the general policies of the Company at the time in force and in respect thereof as the Company shall accord to the Bureau as great a degree of consideration and as favorable treatment as the Company shall accord to any other soliciting unit, including the Company's own sales force engaged in direct solicitation.

IV. Any and all advertising contracts, procured and/or obtained by the Bureau to be performed by the Company, shall forthwith be assigned by the Bureau to the Company.

V. The Company shall pay to the Bureau in full of all compensation and expenses of the Bureau a commission of twelve per cent (12%) computed upon all amounts actually paid by advertisers under contracts for outdoor advertising procured and/or obtained by the Bureau for the Company and accepted by and assigned to the Company as hereinbefore provided (including all contracts to be carried out either in whole or in part upon advertising plants other than those owned and/or operated by the Company), and in respect of which the Company shall receive payment.

In practice, the Company shall currently render invoices for service performed by the Company under contracts obtained by the Bureau upon a special form or forms similar to those now in use and which shall appropriately display the name of the Company and the Bureau. All such invoices shall be rendered to the Agen-

cies respectively through whom the contracts respectively shall have been obtained, and duplicates thereof shall be furnished to the Bureau. Such Agencies shall in remitting deduct the amount of the commission, not exceeding twelve per cent (12%), which may be payable to them under arrangements currently existing between them and the Bureau, of which the Company shall have had previous written notice, and shall pay the amount of the invoice, less such deduction, to the Company. On the first day of each month during the term of this contract, the Company shall render to the Bureau a true and correct report of the amount of the invoices with respect to which the Company shall have received payment as aforesaid to the twentieth day of the preceding calendar month and not theretofore returned to the Bureau, and therewith the Company shall pay to the Bureau an amount equivalent to the difference between twelve per cent (12%) of the aggregate face amount of such invoices and the aggregate of the amounts in respect thereof returned by the agencies as aforesaid.

By way of explanation of the foregoing, the amount which would be retained by an Agency under the foregoing provisions and under arrangements presently existing between the Agencies and Bureau would be ten per cent (10%) of the face amount of the invoice, and the amount payable to the Bureau by the Company would be two per cent (2%) thereof.

The Bureau shall aid and assist the Company, in so far as may be practicable, in the collection of accounts due from advertisers and/or agencies under any and all contracts aforesaid.

VI. So long as the accounts of the advertisers whose names are set forth upon a schedule thereof hereto annexed, marked Exhibit A, and by reference made a part hereof, are active in outdoor advertising and are upon the books of the Bureau and/or advertising Agency which at the time shall be affiliated and/or connected with the Bureau, the Company shall refrain from any solicitation of the said advertisers. Excepting as may be hereafter otherwise agreed on in writing by the parties hereto, the Company shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Bureau and/or any affiliated or connected Agency, and/or if such account and/or accounts, though remaining on the books of the Bureau and/or any affiliated or connected Agency, shall become inactive in outdoor advertising.

So long as the accounts of the advertisers shown upon a schedule thereof hereto annexed marked Exhibit B and by reference made a part hereof, are upon the books of the Company and are active in outdoor advertising, the Bureau shall have no authority to solicit contracts for outdoor advertising from the said advertisers, and the Bureau and its affiliated and connected agencies shall refrain from solicitation thereof. The Bureau, however, shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Company and/or if such account and/or accounts, though remaining on the books of the Company, shall become inactive in outdoor advertising.

Seasonal or periodical accounts shall not be deemed inactive during the normal period of their suspension.

Accounts acquired hereafter by the Bureau or the Company shall be automatically added respectively to Exhibits A and B, and thereupon shall become subject to the pertinent provisions of this article of this contract.

All accounts at the time not included among the accounts currently listed in Exhibits A and B shall be open to solicitation by either the Company or the Bureau, excepting as may be otherwise hereafter agreed upon in writing.

VII. The Company shall forthwith in aid of the sales effort of the Bureau, establish an adequate department composed of capable and experienced representatives who shall cooperate with the Bureau and/or its affiliated Agencies in securing and servicing outdoor advertising accounts through the Bureau and/or its affiliated Agencies only. Excepting as may be otherwise agreed from time to time, the Company, however, shall not be obligated to furnish the services of any person in the Department aforesaid for actual participation in negotiations with advertisers whose accounts are at the time the subject of active competitive solicitation by the Bureau and the Company.

The Company at all times shall use all due diligence in executing all contracts procured by the Bureau and accepted by the Company, and in performing all such contracts the Company shall in all branches of its service, excepting those having to do with the creation and development of design, copy, and ideas for the merchandising of the advertiser's product, assist and cooperate with the Bureau fully and as fully as with any other solicitor of

contracts for outdoor advertising, including the Company's own sales force. The Bureau and its affiliated and connected Agencies shall use and employ its and their best endeavors in the development and extension of the use of the outdoor medium and in the solicitation of contracts to be performed upon the plants and bulletins of the Company.

The Bureau shall at all times during the term of this contract apply a reasonable portion of its total revenues to the employment of competent salesmen soliciting outdoor advertising.

VIII. Each contract for outdoor advertising tendered by the Bureau to the Company shall be plainly marked or stamped with the name of the Agency affiliated or connected with the Bureau by which the contract shall have been procured. If any such Agency shall perform any act which, if done by the Bureau, would be a breach of this contract, or omit to do any act which, if omitted by the Bureau, would be a breach of its contract, and shall fail to make good such default after reasonable written notice thereof to the Agency and to the Bureau, the Company shall have the right to refuse to pay any commissions with respect to contracts for outdoor advertising thereafter procured by such agency, for such time as the Company, in its sole discretion, may determine, but neither the Bureau nor its affiliated or connected Agencies other than the Agency in default shall be under any liability with respect to such a default.

All contracts made by the Company with plant owners other than the Company with respect to the execution of outdoor advertising service required under any contract procured by the Bureau and not to be performed on the outdoor advertising plants owned and/or operated by the

Company shall be stamped or marked with the name of the Bureau.

IX. The term "outdoor advertising" shall be construed to include poster advertising, painted display advertising, electrical display advertising, and any and all other forms of advertising now or hereafter developed and/or engaged in by the Company.

X. Anything hereinbefore contained apparently to the contrary notwithstanding, no commissions shall be payable by the Company to the Bureau with respect to "local business" under contracts and/or renewals hereafter obtained, excepting the "local business" accounts shown upon Exhibit A with respect to which commissions shall be paid at the rate and in the manner provided by paragraph V of this contract.

The term "local business" shall be construed to mean all contracts for outdoor advertising for account of any person operating a retail merchandising business within the city, town, or village in which the contract is to be performed.

XI. The Company recognizes that the cost of the service to be rendered by the Bureau, as contemplated by this contract, will exceed the cost of the service commonly performed in connection with outdoor advertising by a general advertising agency. To avoid discrimination against the Bureau and in favor of any general advertising agency, the Company shall pay to any such general adver-

tising agency commissions upon business produced at not more than the maximum rate of ten per cent (10%).

XII. This contract shall continue and be in full force for a minimum period of five years from the date hereof, which period shall be automatically extended by an additional year for each year of operation hereafter under it or if, as so extended, until notice in writing be given by either party to the other of its desire to terminate the same. Following the giving of such notice the period of this contract shall continue to and terminate at five years from the end of the year of the contract in which such notice be given. Any such notice shall be in writing, subscribed by the party giving the same, enclosed in a customary envelope or wrapper, addressed to the Company at its then executive office in the City of New York, and to the Bureau at its then executive office in the City of New York, and shall be complete from the time of deposit thereof as aforesaid, postage prepaid, in any United States post office, official mail box, and/or official mail chute.

Upon the expiration or sooner termination of this contract, all current contracts for outdoor advertising theretofore assigned by the Bureau to the Company shall be forthwith reassigned to the Bureau.

XIII. The parties shall cause the contract between Thomas Cusack Company and the Bureau, dated November 19, 1918, to be cancelled as of the date of this contract.

XIV. This contract shall extend and apply to the Company and to all and singular the corporations controlled and/or operated by the Company.

In Witness Whereof, the parties hereto have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

General Outdoor
Advertising Co., Inc.,

(Signed) By Kerwin H. Fulton,
President.

Attest:

Geo. L. Johnson (signed).

National Outdoor
Advertising Bureau, Inc.,

(Signed) By Geo. C. Sherman,
President.

Attest:

F. T. Hopkins (signed).

(Appended to the original contract are Exhibits A and B, being lists of "Bureau Accounts" and "Company Accounts," respectively, referred to in Paragraph VI of the foregoing contract.)

EXHIBIT "B"

Option to Purchase Stock of National Outdoor Advertising Bureau, Inc.

Whereas, the National Advertising Bureau, Inc., hereinafter called the Bureau, is a corporation organized for the promotion of Outdoor Advertising; and

Whereas, the Bureau has a contract with General Outdoor Advertising Co., Inc., dated August 24, 1925, which is effective until notice of cancellation by either party be given and for five years from the close of the year in which such notice is given; and

Whereas, the Bureau has most advantageous facilities for the placing of outdoor advertising throughout the United States through the said contract with General Outdoor Advertising Co., Inc., and otherwise; and

Whereas, it is the policy of the Bureau to transact business only for those advertising agencies of approved standing, which have become qualified as members of the Bureau by payment of an initiation fee and by purchase of an option upon some amount of the Bureau's capital stock and otherwise complying with the Bureau's terms, and

Whereas, hereinafter called the grantee, desires so to qualify and become a member of the Bureau;

w, Therefore, George C. Sherman, Frederick J. Ross, and William D. McJunkin, who are trustees for the Bureau and those purchasing options upon the capital stock of the Bureau, hereby grant to the grantee an option to purchase at any time at and after the date of the expiration of said contract between the Bureau and General Out-

door Advertising Co., Inc., aforementioned, One share of said stock at the price of $100 upon the following terms and conditions:

First. That the grantee shall, within fifteen days from the date hereof, pay to said trustees as the price of this option the sum of One hundred dollars and shall return to said trustees a duplicate hereof duly signed by the grantee.

Second. That, as the share covered by this option is subject to assessment by the Bureau during the life of this option to an amount not exceeding $100 in any calendar year, the grantee agrees to pay to the Bureau the amount of any such assessment and/or assessments, if any, when and as the same may be made.

Third. During the life of this option, the trustees will, upon request from the grantee, give a stock proxy on the share hereby covered at any time and from time to time, and will pay or cause to be paid to the grantee all dividends which may be paid thereon, or a sum equivalent thereto.

Fourth. During the life of this option the grantee covenants and agrees that the Bureau shall be the grantee's sole agent for the placing of outdoor advertising and shall collect and receive for its services and expenses of every nature that percentage of the commissions which may be paid on account of such advertising as is currently charged to all its other members.

Fifth. This option is personal to the grantee and is not transferable, nor can any rights or privileges under it, or of membership in the Bureau, be transferred.

Sixth. It is agreed that any breach of any of the terms hereof by the grantee or any act or conduct of the

grantee which shall or may be prejudicial to the interests of the Bureau, may cause the suspension or expulsion of the grantee from membership in the Bureau and the forfeiture of all the rights and privileges of membership, as well as the forfeiture and cancellation of this option, and the forfeiture of the moneys paid therefor.

Seventh. If any complaint be made by the Bureau or any of its officers, agents, or members of any breach of the terms hereof or of any act or conduct prejudicial to it by the grantee, the trustees shall notify the grantee thereof, giving reasonable time and opportunity for the latter to reply. After hearing the complainant and the grantee and any evidence pertaining to the facts which may be offered the Trustees, it is hereby covenanted and agreed by the Bureau and the grantee that the Trustees shall act as arbitrators and, as such, shall determine the issues and define the penalty, both the Bureau and the grantee hereby agreeing to be bound by their decision.

Eighth. The Bureau consents to execution of this option upon the terms stated, will deliver a certificate of its capital stock to the trustees to be held by them against said option upon receipt from them of payment therefor in the sum of $100 and will, itself, be bound by such of the terms of this agreement as are pertinent to it.

In Witness Whereof, the parties hereto have executed this instrument this day of ———, 192—.

National Outdoor Advertising Bureau, Inc.,

By ——— ———, President.

Agency ——— ———,

By ——— ———.

EXHIBIT "C"

This Agreement, made this 22nd day of November, 1927, between Henry Morton, of Baltimore, Md., hereinafter called the Seller, and General Outdoor Advertising Co., Inc., a New Jersey Corporation, having its principal office for the transaction of business in the City of New York, N. Y., hereinafter called the Buyer—

Whereas P. & H. Morton Advertising Company, a Maryland Corporation of Baltimore, Md., hereinafter sometimes referred to as the Company, is presently engaged, among other things, in the Outdoor Advertising business, but is about to retire from the Outdoor Advertising business and to distribute its Outdoor Advertising Plant and certain of its assets incidental thereto to its stockholders in partial liquidation; and

Whereas the Seller does hereby represent and warrant by these presents that he owns or controls all of the outstanding capital stock of the Company.

Now, Therefore, This Agreement Witnesseth:

That the parties hereto, in consideration of the mutual convenants hereinafter expressed and of the sum of One Dollar by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, hereby agree as follows:

I. The Seller shall duly acquire from the Company, and shall grant, convey, sell and deliver to the Buyer, and the Buyer shall purchase from the Seller the following

assets of the Company incidental to its Outdoor Advertising business, namely—

(a) All and singular the poster panels, painted bulletins and/or other structures (including ground, wall, roof, illuminated and/or nonilluminated panels and/or bulletins of every kind and description) for the display of copy in outdoor advertising presently owned by the Company consisting of approximately 1404 Regular Poster Panels, 335 Special Poster Panels, 569 Three-Sheet Poster Panels, 373 Painted Bulletins, and 619 Wall Spaces, located in Baltimore, Cumberland, Frederick, Annapolis and other smaller towns in the Washington District and elsewhere. A list of towns herein referred to is annexed hereto marked Schedule "A" and by reference made a part hereof.

(b) All tools, trucks, automobiles, supplies, material and equipment of every kind or description presently owned by the Company and used in its business, excepting only office furniture, fixtures, office equipment and One Cadillac, One Moon, One Chandler and One Hup-Mobile (Engine Number 491197; serial Number 48836) which, though carried on the books of the Company, are the individual property of Mrs. Morton, the Seller, Edward Schaub, and Lawrence Morton, respectively.

(c) All leases, licenses, contracts and privileges for locations of the advertising structures and spaces aforesaid, but not including real estate owned by the Company in fee.

(d) All contracts with advertisers for advertising service to be rendered upon and/or in connec-

tion with the advertising structures aforesaid or otherwise.

(e) All and singular the above described assets presently owned by the Company and used in the operation of a poster advertising and painted display advertising plant and business, including the Commercial Sign Department, together with the good will thereof and including the certain contract made between the Company and Michael P. Gillen of Baltimore, Md. under and by which the said Michael P. Gillen has agreed not to engage in the Outdoor Advertising business for a period mentioned in said contract.

II. The transfer of all and singular the foregoing property and assets shall be made free and clear of all liens and encumbrances whatsoever. The instruments of transfer shall contain provisions appropriate to express the following covenants and/or warranties of the Seller—

(a) That the Seller is the owner free and clear of all liens and encumbrances, of all and singular the said property and assets and has good right to convey the same.

(b) That the outdoor advertising structures thereby transferred shall include not less than the numbers hereinbefore set forth of a lineal footage respecting poster panels and painted bulletins and of a square footage respecting painted walls, approximately as specified in a Schedule thereof hereto attached and marked Schedule "B," together with the leases and/or contracts for locations pertinent to the locations upon which such outdoor advertising struc-

tures are located and/or maintained, excepting only five (5) of such structures which are located and maintained upon real property owned by the Seller or the Company, with reference to which provision is hereinafter made.

(c) That the structures thereby transferred are in condition equal to the usual standards prevailing in the outdoor advertising industry, commonly known as Double "A" in posting and Gude type and standard in paint.

(d) That all of the said leases and/or contracts for locations are valid and subsisting according to the tenor thereof respectively, and that all rents and/or other payments which shall have accrued thereunder prior to the date as of which the closing hereunder shall be had and in respect of which no adjustment shall have been made at the closing (if any) have been paid.

III. Upon the closing, hereunder, adjustments shall be made as of January 1, 1928, with respect to rents prepaid, accruing and to accrue under all the leases and/or contracts for locations aforesaid, to payments under contracts with advertisers for advertising services to be rendered as aforesaid, after January 1, 1928, to special taxes on said Outdoor Advertising structures (if any), insurance and Outdoor Advertising Association dues. The Seller covenants that neither he nor the Company shall, prior to the date of closing hereunder, solicit payments from advertisers under contracts for Outdoor Advertising service to

be rendered by the Company or the Seller, excepting in the regular course of business and in accordance with the terms of such contracts respectively. The Seller further covenants that all payments (if any) otherwise received by the Seller or the Company prior to the date of closing hereunder shall be accounted for by the Seller to the Buyer upon the closing. The Seller further covenants that until the closing hereunder shall be had, the Company and/or the Seller shall continue to conduct its business and to service and maintain said advertising structures as well as leases and/or contracts hereby agreed to be transferred in the same manner as heretofore serviced and maintained by the Company in the ordinary conduct of its business, it being the intent thereof that from and after January 1, 1928, the properties aforesaid shall be operated by the Seller and/or the Company for account of the Buyer.

IV. The Seller shall cause proceedings duly to be had by the Company and its stockholders and directors to the end that the Seller shall duly acquire title to the property, more particularly described in this agreement, and shall have, at the time of closing, a good title thereto sufficient to grant, convey, sell, and deliver the same to the Buyer hereunder, free and clear of all liens and encumbrances as herein specified, and the Seller shall cause the Company to permit counsel for the Buyer to inspect the record of all such proceedings.

V. The Seller shall, at the request of the Buyer, take and shall cause the Company to take any legal steps,

whether under any bulk Sales Act applicable or otherwise to the end that the Buyer as a result of the transfer hereunder shall obtain good and valid title free and clear of all claims, liens, and encumbrances of all and singular the property and assets above described.

VI. Upon the closing hereunder the Seller shall cause leases to be executed and delivered to the Buyer of spaces for the erection and maintenance of Advertising Structures for the locations and for the terms and upon the rents respectively shown upon a schedule hereto annexed marked Schedule "C" and by reference made a part thereof, such leases to be executed and delivered by the Seller and/or the Company and/or any other parties having title to the locations and having the right to grant such leases.

VII. The Buyer shall not assume and/or become charged with any obligations, liability, and/or commitment whatsoever of the Seller or of the Company as a result of the transfer, save only the following with respect to which the Buyer shall save and hold harmless the Seller and the Company:

(a) The performance of all obligations of the Company under all leases and/or contracts for locations of advertising structures which shall accrue subsequently to January 1, 1928, and/or with respect to which adjustment in favor of the Buyer shall be made upon the date of delivery of such instruments of transfer.

(b) The performance of all of the obligations of the Company under terms of the Company's present contracts with advertisers for outdoor advertising service to be rendered by the Company, which shall accrue subsequently to January 1, 1928.

VIII. For the assurance to the Buyer of the beneficial enjoyment of the good will of the Company hereby agreed to be transferred, the Seller hereby agrees that he will not and will not permit the Company to engage in the Outdoor Advertising business in the State of Maryland, District of Columbia, or Alexandria, Va., following the delivery of instruments of transfer hereunder, excepting only as the Seller may engage in such business in such territory in connection with the business of the Buyer, its successors or assigns.

IX. The Seller covenants that neither he nor the Company have outstanding any purchase employment and/or other contracts other than leases, contracts for locations and contracts with advertisers for advertising service to be rendered by the Company, the term of which expires beyond December 31, 1927, excepting only the above mentioned contract with Michael P. Gillen (which has been exhibited by the Seller to the Buyer and is by reference made a part hereof) under which the Company has agreed to employ the said Michael P. Gillen for a period of four years from April 1, 1926. The said contract shall be duly transferred to and assumed by the Buyer as of the date of closing hereunder.

X. The purchase price is Six Hundred Twenty-Nine Thousand Dollars ($629,000.00) payable Twenty-Five Thousand Dollars ($25,000.00) upon execution hereof, receipt whereof is hereby acknowledged, by the Seller, and balance in cash, New York funds, on the closing.

XI. Delivery of instruments of transfer to the Buyer and payment to the Seller, as herein provided, shall be made at the office of the Buyer at Number One Park Avenue, New York City, within sixty (60) days from the date hereof, on a day and at an hour to be specified by the Buyer in a written notice signed by the Buyer and mailed to the Seller not less than ten (10) days before the day and hour specified for the closing and addressed to the Seller at 222 S. Howard Street, Baltimore, Md.

In Witness Whereof, the Seller has hereunto set his hand and seal and the Buyer has caused these presents to be signed in its corporate name and its corporate seal to be hereunto affixed by its officers duly authorized thereto the day and year first above written.

(Signed) Henry Morton. [L. S.]

Witness:

(Signed) Wm. M. Williams.

General Outdoor
Advertising Co., Inc.,

(Signed) By K. H. Fulton, President.

Attest:

(Signed) I. W. Digges, Secretary.

AMENDMENT TO EXHIBIT "C"

Without prejudice to the rights of either of the undersigned under the purchase and sale contract between the undersigned dated November 22nd, 1927, it is agreed:

(1) That Paragraph Eleven of the said contract shall be amended so as to read as follows:

> Delivery of instruments of transfer to the Buyer and payment to the Seller, as herein provided, shall be made at the office of the Buyer at No. One Park Avenue, New York City, within thirty days from January 21, 1928, on a day and hour to be specified by the Buyer in a written notice signed by the Buyer and mailed to the Seller not less than ten days before the day and hour specified for the closing and addressed to the Seller at 222 South Howard Street, Baltimore, Maryland.

(2) That interest upon the purchase price from January 21, 1928, shall be paid by the Buyer.

(3) If, upon the closing under said contract, the footage to be sold by the Seller to the Buyer thereunder shall on a correct check-up be found to be less than the approximate amount specified in said contract, and the shortage so found to exist is or was caused by wind or cyclone subsequent to January 21, 1928, the shortage so determined shall be allowed to the Seller.

(4) Excepting as hereby expressly modified the terms of the said contract of November 22, 1927, remain unchanged.

In Witness Whereof the Seller has hereunto set his hand and seal, and the Buyer has caused these Presents to be signed in its corporate name and its corporate seal to be hereunto affixed by its officers duly authorized this Tenth day of January, 1928.

(Signed) Henry Morton. [L. S.]

Witness:

(Signed) G. F. Hurd.

(Signed) Wm. M. Williams.

General Outdoor
Advertising Co., Inc.,

(Signed) K. H. Fulton, President

Attest:

(Signed) I. W. Digges, Secretary.

United States of America)
Southern District of New York) ss:

I, CHARLES WEISER, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 8th day of November in the year of our Lord one thousand nine hundred and thirty-four and of the Independence of the United States the One Hundred and Fifty-ninth

[Seal of the District Court of the United States]

Charles Weiser Clerk.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 218 in evid 1/10/35, withdrawn from evidence, and now marked for ident. Filed 1/11 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

The certified copy of the decree in the above entitled case was thereupon received in evidence and marked Plaintiff's Exhibit 219.

Said Plaintiff's Exhibit 219 is in words and figures as follows, to wit:

[Plaintiff Exhibit No. 219.]

In the
District Court of the United States
in and
For the Southern District of New York.

UNITED STATES OF AMERICA,
Petitioner,

v.

GENERAL OUTDOOR ADVERTISING CO., INC., NATIONAL OUTDOOR ADVERTISING BUREAU, INC., OUTDOOR ADVERTISING ASSOCIATION OF AMERICA, INC., FOSTER AND KLEISER COMPANY, FOSTER AND KLEISER INVESTMENT COMPANY, KERWIN H. FULTON, GEORGE JOHNSON, GEORGE ARMSBY, Individually and as Voting Trustees, and GEORGE W. KLEISER,
Defendants.

FINAL DECREE

Charles H. Tuttle,
United States Attorney.

William D. Mitchell,
Attorney General.

Horace R. Lamb,
Breck P. McAllister,
Special Assistants to
The Attorney General.

Entered, May 7, 1929.

United States District Court
For the Southern District of New York.

United States of America,	)	
Petitioner,	)	
v.	)	
General Outdoor Advertising Co., Inc., National Outdoor Advertising Bureau, Inc., Outdoor Advertising Association of America, Inc., Foster and Kleiser Company, Foster and Kleiser Investment Company, Kerwin H. Fulton, George Johnson, George Armsby, individually and as Voting Trustees, and George W. Kleiser,	)	In Equity No. 46-50.
Defendants.	)	

FINAL DECREE

This cause came on to be heard at this term, and on consideration thereof, and on motion of the petitioner, by Charles H. Tuttle, Esq., United States Attorney, and Horace R. Lamb, Esq., and Breck P. McAllister, Esq., Special Assistants to the Attorney General, of counsel, for relief in accordance with the prayer of the petition, and it appearing to the satisfaction of the court that the petitioner is entitled to the relief hereinafter granted, and the defendants appearing by their counsel and consenting in open court to the rendition and entry of this decree, now, therefore,

It is Ordered, Adjudged and Decreed, as follows:

I.

Definitions.

The term "Persons," as used herein, includes individuals, firms, associations, corporations, municipalities and/or governmental agencies.

The term "Poster-Plant," as used herein, means the several billboards, and/or poster-panels (whether built as separate structures or attached to building-walls, or otherwise) used for the purpose of showing outdoor advertising posters or lithographs, which are under common ownership and are located in a given city, town, village or other operating area.

The term "Paint-Plant," as used herein, means the several signboards, paint-panels, and/or bulletin-boards (whether built as separate structures or attached to or part of building-walls, or other structures) used for the purpose of having painted thereon designs, slogans, and other outdoor advertising matter, which are under common ownership and are located in a given city,town, village or other operating area.

The term "Display-Plant," as used herein, includes the term "Poster-Plant" and/or "Paint-Plant," as defined herein.

The term "Display-Plant Operator," as used herein, means any person, firm or corporation engaged in the business of owning and operating either a "Poster-Plant" and/or a "Paint-Plant."

The term "General Agency," as used herein, means any person, firm or corporation engaged in the business of

soliciting contracts for periodical, newspaper and other forms of advertising, as well as for the display of outdoor advertising matter on display plants.

The term "solicitor," as used herein, means any person, firm or corporation engaged exclusively in the business of soliciting contracts for the display of outdoor advertising matter on "Display-Plants."

The term "General Company," as used herein, means the General Outdoor Advertising Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as well as any other corporation which is engaged in the outdoor advertising business, either as a Solicitor or as an Operator of a display plant, either as principal or agent, a majority of the voting stock of which is owned or controlled by the said General Outdoor Advertising Co., Inc., and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act on behalf of it or them, or any of them.

The term "Bureau," as used herein, means the National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, as well as the advertising agencies owning one or more shares of its stock or holding options to acquire such stock, which agencies are hereinafter sometimes referred to as "Bureau Members," and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act, on behalf of it or them or any of them.

II.

1. That the petition herein states a cause of action against the defendants under the Act of Congress of July 2nd, 1890, and/or the Act of Congress of October 15, 1914, as amended, and that the Court has jurisdiction of the parties and of the subject matter alleged in the petition.

2. That the contract dated August 24, 1925, a copy of which is annexed to the petition herein and marked Exhibit "A", entered into and now existing between the General Company and the Bureau, be, and the same hereby is, declared illegal and null and void, and that the General Company and the Bureau be, and they hereby are, perpetually enjoined from directly or indirectly, expressly or impliedly, further carrying out this agreement, or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts; provided, however, (1) that operations under the contract dated August 24, 1925, may be temporarily continued until November 1, 1929, for the purpose of making necessary changes and adjustments in the business operations of the parties, incident to the voiding of the contract, (2) that any contracts for outdoor advertising displays assigned to the General Company by the Bureau, pursuant to the provisions of the contract dated August 24, 1925, the execution of which shall not have been completed on or before November 1, 1929, shall, on or before said last-mentioned date, be reassigned to the Bureau.

soliciting contracts for periodical, newspaper and other forms of advertising, as well as for the display of outdoor advertising matter on display plants.

The term "solicitor," as used herein, means any person, firm or corporation engaged exclusively in the business of soliciting contracts for the display of outdoor advertising matter on "Display-Plants."

The term "General Company," as used herein, means the General Outdoor Advertising Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as well as any other corporation which is engaged in the outdoor advertising business, either as a Solicitor or as an Operator of a display plant, either as principal or agent, a majority of the voting stock of which is owned or controlled by the said General Outdoor Advertising Co., Inc., and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act on behalf of it or them, or any of them.

The term "Bureau," as used herein, means the National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, as well as the advertising agencies owning one or more shares of its stock or holding options to acquire such stock, which agencies are hereinafter sometimes referred to as "Bureau Members," and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act, on behalf of it or them or any of them.

II.

1. That the petition herein states a cause of action against the defendants under the Act of Congress of July 2nd, 1890, and/or the Act of Congress of October 15, 1914, as amended, and that the Court has jurisdiction of the parties and of the subject matter alleged in the petition.

2. That the contract dated August 24, 1925, a copy of which is annexed to the petition herein and marked Exhibit "A", entered into and now existing between the General Company and the Bureau, be, and the same hereby is, declared illegal and null and void, and that the General Company and the Bureau be, and they hereby are, perpetually enjoined from directly or indirectly, expressly or impliedly, further carrying out this agreement, or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts; provided, however, (1) that operations under the contract dated August 24, 1925, may be temporarily continued until November 1, 1929, for the purpose of making necessary changes and adjustments in the business operations of the parties, incident to the voiding of the contract, (2) that any contracts for outdoor advertising displays assigned to the General Company by the Bureau, pursuant to the provisions of the contract dated August 24, 1925, the execution of which shall not have been completed on or before November 1, 1929, shall, on or before said last-mentioned date, be reassigned to the Bureau.

3. That those recitals in which reference is made to the provisions of the said contract dated August 24, 1925, between the General Company and the Bureau (hereinbefore declared illegal and null and void), and the provisions of the several agreements designated "Option to Purchase Stock of the National Outdoor Advertising Bureau, Inc.," entered into by George C. Sherman, Frederick J. Ross, and William C. McJunkin, as trustees for the Bureau and the holders of options to purchase shares of the capital stock of the Bureau (a true copy of the form of which Option Agreement is annexed to the petition herein and marked Exhibit "B"), under which the Bureau is constituted the Bureau members' sole agent for the placing of outdoor advertising contracts, be and they hereby are declared null and void, and the Bureau and its trustees named in the Option Agreement, and each of them, be and they hereby are, perpetually enjoined from carrying out those recitals and provisions of the said option agreements, or from entering into or performing any agreement or agreements under which the Bureau shall be constituted the sole, exclusive agent of Bureau members for the placing of outdoor advertising.

4. That the Bureau be, and it hereby is, perpetually enjoined from giving or granting any preferences, priority, rebate or discrimination, in any form whatsoever, to, or in favor of, or against, the General Company, or any other person, in connection with any contract or contracts for outdoor advertising displays; or from interfering in any manner whatsoever with the selecting of display-plants which have been made by advertisers, Bureau members, or any other persons employing the Bureau's services, in their several contracts for outdoor

advertising displays; or from changing, or refusing to comply with, the instructions of such advertisers, members, or other persons, with respect to the selection of the particular display-plant or display-plants on which such contracts are to be executed; provided, however, that nothing contained in this paragraph shall prevent the Bureau or any of its representatives from making bona fide recommendations to any of its members or other persons employing its services, in response to inquiries from them, or any of them, concerning the merits of a particular display-plant, or from carrying out the instructions of any advertiser, Bureau member, or any other persons employing its services, with respect to modifying, changing or cancelling existing contracts for outdoor advertising displays which have been entered into by such advertisers, Bureau members, or other persons.

5. That the acts hereinafter in this paragraph enjoined would, if performed, violate the Act of Congress of July 2, 1890, or the Act of Congress of October 15, 1914, as amended, and are illegal and therefore the General Company be, and it hereby is, perpetually enjoined and restrained from doing, either directly or indirectly, any or all of, the following acts:

(a) Giving or granting any preference, priority, rebate, or any discrimination (except as provided in subparagraph [f] hereinafter) in any form whatsoever, to, in favor of, or against the Bureau, or any member thereof, or any person employing the services of the Bureau, or any other person, in connection with any contract or contracts for outdoor advertising displays to be executed in whole or in part on the display-plants owned or operated by the General Company.

(b) Refusing or failing to furnish or to sell advertising space on the display-plants owned or operated by the General Company or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays; provided however, that nothing herein shall prevent the General Company from refusing to sell advertising spaced based on bona fide compliance with reasonable requirements as to financial responsibility or business ethics.

(c) Requiring, or attempting to require, any person or persons to purchase, or agree to purchase, space on, or to use, or to agree to use, the display-plants of the General Company, or to employ, or to agree to employ, its services, in any place or places where the General Company operates display-plants or furnishes services in competition with competitors, in preference to the display-plants or the services of a competitor, as a condition to the making of a contract with such person or persons for the purchase of space on, or the use of, the display-plants, or any of the display-plants, of the General Company, or the employment of its services.

(d) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the General Company and in part on display plants owned and/or operated by persons other than the General Company, that the General Company shall sublet the part or parts of such contracts, or any of them, to be executed on the display-plants owned

and/or operated by persons other than the General Company; provided, however, that nothing contained in this sub-paragraph (d) shall prevent the General Company from retaining any or all of its property or property rights employed by it in negotiating for a contract for an outdoor advertising display.

(e) Inducing, or attempting to induce, national advertisers, or local representatives of such national advertisers, or solicitors, or general advertising agencies, who may have entered into, or may hereafter enter into, contracts for national outdoor advertising displays in which there has been, or may be, designated display-plants other than the display-plants of the General Company and which contracts have been, or may be assigned to, or placed with, the General Company to be "serviced" or "sub-let" to plant operators other than the General Company, to change the designation in such contracts of the display-plants other than those of the General Company, so that the contracts will provide for execution on the display-plants of the General Company or on display plants other than those originally designated in the contract.

(f) Inducing, or attempting to induce, advertisers not to employ, or to discontinue the employment of, the services of competing solicitors by granting secret rebates, or by entering into any arrangement for the formation of an advertising agency which in fact is a department of the business of an advertiser, or by making discriminations in price or service, where the purpose or the effect thereof is or may be substantially to lessen competition or tend to create a monopoly in the outdoor advertising business; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers

or users of space or employers of service on account of differences in the grade, quality or quantity thereof, or that makes due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and provided, further, that nothing contained in this subparagraph (f) shall prevent the General Company from selecting its own customers in bona fide transactions, and not in restraint of the outdoor advertising business.

(g) Knowingly and falsely representing to persons that the quality of the services rendered, or to be rendered, by competitors of the General Company, whether display-plant operators or solicitors, is, or will be, inferior to the quality of the services rendered, or to be rendered, by the General Company, where the purpose or effect thereof is, or will be, to induce such persons not to purchase space on, or to use the display-plants of, or employ the services of, such competitors of the General Company; provided, however, that nothing herein shall be construed to prevent the making of bona fide representations concerning the merits of the quality of the services rendered, or to be rendered, by the General Company.

(h) Adopting or carrying out a practice, either generally or with respect to any particular community, of interfering with competitors, operators of display-plants, with the purpose or knowingly with the effect of excluding such competitors from carrying on their regular course of business; provided, however, that nothing in this sub-paragraph (h) shall be construed to prevent the General Company from making offers for leases or other-

wise conducting its business operations in good faith to meet competition.

(i) Acquiring, either directly or indirectly, the ownership or control of any additional display-plant or display-plants (whether now in existence or hereafter to come into existence), either by acquisition of shares of stock, purchase of assets or otherwise, or constructing any additional display-plant or display-plants (except by way of replacement of an existing plant now owned by the General Company), where the purpose of acquiring or constructing such additional display-plant or display-plants is primarily to exclude competitors from engaging in or continuing to engage in the outdoor advertising industry.

6. That the election of defendant George W. Kleiser as a member of the Board of Directors of the General Company be, and it hereby is, declared a violation of Section 8 of the said Act of Congress of October 15, 1914; and it is ordered that forthwith the said George W. Kleiser resign his office as a director of the said General Company; and it is further ordered that the said George W. Kleiser be, and he hereby is, perpetually enjoined from accepting office as a director of the said General Company while he shall hold office as a director of Foster and Kleiser Company, or of any other corporation with which the General Company is, or may be, in competition in the outdoor advertising business.

7. That within one year from the entry of this decree the defendants Kerwin H. Fulton, George L. Johnson

and George Armsby, individually and as voting trustees, be, and they hereby are, ordered and directed to cause the Voting Trust Agreement, dated as of February 26, 1925, referred to in the petition herein, to be terminated; and after the expiration of one year from the entry of this Decree these defendants and each of them, be, and they hereby are, njoined from further performing this Voting Trust Agreement, either directly or individually, or from doing any act pursuant thereto, excepting only the transfer and delivery of certificates representing the shares of common stock in the General Company to such persons as are entitled to receive the same in exchange for voting trust certificates now issued and outstanding.

8. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, co-partnerships and/or individuals who may hereafter acquire ownership or control, directly or indirectly, of the stock or of the property, business and good will of any of the corporate defendants, whether by merger, consolidation, reorganization, transfer of assets or otherwise.

9. That the petition herein be and it hereby is dismissed, without prejudice, as to the defendants Outdoor Advertising Association of America, Inc., Foster and Kleiser Company and Foster and Kleiser Investment Company.

10. That jurisdiction of this cause and of the defendants (except as to those defendants against whom the petition is dismissed) be, and it hereby is, retained for the following purposes:

(a) Enforcing this decree;

(b) Enabling the petitioner to apply to the Court for a modification or enlargement of any provisions of this decree, and for other and further relief on the ground that the decree is inadequate; and

(c) Enabling the defendants or any of them to apply for a modification of any provision of this decree, on the ground that they have become inappropriate or unnecessary.

11. That the petitioner shall recover its taxable costs.

(Signed) JULIAN W. MACK,
U. S. C. J.

Dated: New York, May 7, 1929.

3.02 P. M.

We hereby consent to the making and entry of the foregoing decree and waive notice of taxation of costs.

UNITED STATES OF AMERICA,

(Signed) HORACE R. LAMB,
(Signed) BRECK P. MCALLISTER,
Special Assistants to the
Attorney General.

GENERAL OUTDOOR ADVERTISING CO., INC.,

(Signed) GEO. F. HURD,
Its Solicitor.

National Outdoor Advertising Bureau, Inc.,

(Signed) D. D. Wever,
(Signed) E. F. Colladay,

Its Solicitors.

Outdoor Advertising Association of America, Inc.,

(Signed) George Wharton Pepper,
(Signed) E. Allen Frost,

Its Solicitors.

Foster and Kleiser Company,
Foster and Kleiser Investment Company,
George W. Kleiser,

(Signed) David L. Podell,

Their Solicitor.

Kerwin H. Fulton,
George Johnson,
George Armsby,

Individually and as Voting Trustees,

(Signed) Geo. F. Hurd,

Their Solicitor.

Filed: January 11, 1935.

The petition and final decree in the case of United States of America vs. Foster & Kleiser Company, in Equity Case No. R-31-M, were thereupon received in evidence and marked Plaintiff's Exhibit 220.

Said Plaintiff's Exhibit 220 is in words and figures as follows, to wit:

[Plaintiff's Exhibit No. 220.]

In the District Court of the United States for the Southern District of California, Central Division

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Equity No. R-31-M

United States of America, petitioner

v.

Foster & Kleiser Company, George W. Kleiser, Walter F. Foster, August F. Lausen, Jr., and Restop Realty Company, defendants

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PETITION

The United States of America by Samuel W. McNabb, United States Attorney for the Southern District of California, acting under the direction of the Attorney General, brings this proceeding in equity against:

1. Foster & Kleiser Company, a corporation organized and existing under the laws of Nevada, engaged in the business of outdoor advertising.

2. George W. Kleiser, its President, a citizen of the United States and a resident of San Francisco, California.

3. Walter F. Foster, its Vice-President, a citizen of the United States and a resident of San Francisco, California.

4. August F. Lausen, Jr., its General Manager, a citizen of the United States and a resident of San Francisco, California.

5. Restop Realty Company, a corporation organized and existing under the laws of California engaged in the business of owning, holding and leasing real estate.

6. The defendant Foster & Kleiser Company has its principal place of business in San Francisco, California and maintains branch offices in Oakland, Fresno, Los Angeles, Long Beach and San Diego, California; in Seattle and Tacoma, Washington; and in Portland, Oregon.

7. Each of the individual defendants have, during the time herein mentioned, been actively engaged in conducting the business and affairs of Foster & Kleiser Company including the interstate trade and commerce in outdoor advertising hereinafter described.

8. The defendants George W. Kleiser and Walter F. Foster have together owned or controlled more than fifty per cent (50%) of all the voting stock of defendant Restop Realty Company and have together determined the policies and dominated and controlled the business and affairs of said corporation.

9. All allegations in this petition are intended to include the present tense except where otherwise stated.

10. The District of Columbia and territories of the United States are intended to be included within the word state or states used herein except when otherwise shown.

11. For many years last past, up to and including the date of the filing of this petition, a number of persons, firms and corporations including Foster and Kleiser Company have been continuously engaged in the business of outdoor advertising, that is to say, displaying on out of door structures advertising matter designed principally to promote the sale of certain goods, wares and merchandise

throughout the United States. In conducting this business the said persons, firms and corporations, including Foster & Kleiser Company, have owned and leased parcels of real estate in desirable locations in cities, towns and rural districts throughout the States of Washington, Oregon, California and Arizona which states are hereinafter collectively referred to as the Pacific Coast Area. They have erected and maintained on said parcels of real estate numerous structures of wood and metal designed to display advertisements.

12. Large numbers of said advertisements have been in the form of lithographs which have been pasted or otherwise affixed to the face of said structures. These lithographs have been manufactured or printed by certain individuals, firms and corporations hereinafter referred to as lithographers located in states other than those which comprise the Pacific Coast Area, principally in Kentucky, Ohio and Illinois. Foster & Kleiser Company has been soliciting and entering into many thousands of contracts for the display of advertising matter on said structures with persons, firms and corporations located throughout the United States and hereinafter referred to as advertisers, desirous of promoting the sale of their respective goods, wares and merchandise throughout the Pacific Coast Area. For the most part said advertisers have been located in States other than those comprising the Pacific Coast Area and are too numerous otherwise to identify herein. Many thousands of such contracts and arrangements have been made and are now being performed between Foster & Kleiser Company and said advertisers for the shipment and transportation of lithographs from said lithographers to the said branches main-

tained as aforesaid by Foster & Kleiser Company throughout the Pacific Coast Area. Pursuant to said contracts and arrangements many thousands of lithographs have been and are being shipped and transported by said lithographers or advertisers located in places other than those comprising the Pacific Coast Area to the said branches maintained by Foster & Kleiser Company throughout the Pacific Coast Area.

13. Large numbers of said advertisements displayed as aforesaid on said structures have been painted directly on the face of the said structures through the medium of designs or stencils. Foster & Kleiser Company has been manufacturing the paint used on its structures as aforesaid at a factory maintained by it for this purpose in San Francisco, California; and has been shipping and transporting and causing the transportation and shipment of the said paint from its factory in California into states other than that in which it has been manufactured as aforesaid. Foster & Kleiser Company has also been transporting and shipping and causing the transportation and shipment of the said designs and the said stencils used in painting the said structures from the several states in which they have been respectively manufactured into states other than those of manufacture.

14. Foster & Kleiser Company has also been engaged in manufacturing at its several branches throughout the Pacific Coast Area so-called hand painted posters and has been shipping and transporting and causing the shipment and transportation of same from the state in which they have been manufactured as aforesaid to states other than those of manufacture.

15. Foster & Kleiser Company has also been engaged in manufacturing and fabricating at its said branches maintained throughout the Pacific Coast Area metal parts used in building the aforesaid structures, including metal sections and braces; and has been shipping and transporting and causing the shipping and transportation of same from the branches at which they have been respectively manufactured as aforesaid to states other than those of manufacture.

16. The said lithographs, hand-painted posters, paint, designs, stencils and metal parts which have been shipped and transported as aforesaid by Foster & Kleiser Company from the states where they have been respectively manufactured into states other than those of manufacture have been used as the media to convey information concerning the goods, wares and merchandise of advertisers located throughout the United States to prospective buyers located throughout the Pacific Coast Area and the contracts entered into by Foster & Kleiser Company with advertisers as aforesaid have been made for the purpose of having the information contained in said lithographs and painted posters transported from the state or states in which said lithographs and painted posters have been respectively made to states other than those where they have been so made.

17. Petitioner therefore alleges that said persons, firms and corporations including Foster & Kleiser Company have been and now are engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against

Unlawful Restraints and Monopolies" commonly known as the Sherman Antitrust Act.

18. Foster & Kleiser Company has owned or controlled approximately eighty percent (80%) of the outdoor advertising structures located in the Pacific Coast Area and has transacted approximately ninety percent (90%) of the total business of outdoor advertising in the Pacific Coast Area.

19. During the time herein mentioned the defendants have monopolized and attempted to monopolize and now are monopolizing and attempting to monopolize the said interstate trade and commerce in outdoor advertising in the manner and by the means hereinafter alleged.

20. By acquiring the ownership or control of numerous outdoor advertising companies including the Lafon System, Inc., of Los Angeles, California and The Coast Advertising Company of Oakland, California with the purpose, intent and effect of creating a monopoly of the said interstate trade and commerce in outdoor advertising throughout the Pacific Coast Area.

21. By formulating, adopting and practicing the policy, either generally or with respect to particular communities, of interfering with competitors for the purpose of preventing said competitors from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company by the following means, to wit:

Offering to pay and in fact paying for outdoor advertising sites amounts in excess of their true worth and value; making fictitious offers to purchase or lease outdoor advertising sites at amounts in excess of their true

worth and value; attempting to cause the cancellation and in fact causing the cancellation of leases to which competitors are a party by false representations that the said sites are desired for other than advertising purposes; attempting to lease and in fact leasing more outdoor advertising sites than are reasonably required for the proper conduct of the outdoor advertising business; leasing and attempting to lease outdoor advertising sites which are never intended to be or in fact are used for any purpose; leasing and attempting to lease outdoor advertising sites on the understanding that same will not be used for outdoor advertising purposes; continuously soliciting, obtaining and reporting detailed information regarding outdoor advertising sites leased by competitors; physically obstructing, concealing, covering, obliterating, destroying and otherwise impairing the visibility of outdoor advertising structures owned, operated or controlled by competitors; employing agents for the purpose of obtaining information and cooperation from city and county officials regarding outdoor advertising sites owned or leased or intended to be owned or leased by competitors; and by use of the means above described the said competitors have in fact been prevented from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company.

22. By formulating, adopting and practicing the policy, either generally or with respect to particular communities, of contracting with advertisers for the display of outdoor advertising matter at unfair or discriminatory prices and under unfair or discriminatory terms and conditions; that is to say, charging different prices for the same product

to advertisers occupying substantially the same positions in the trade for the purpose and with the intent of excluding competitors of Foster & Kleiser Company from carrying on the outdoor advertising business and the aforesaid interstate trade and commerce in competition with Foster & Kleiser Company and said competitors were thereby in fact excluded from carrying on the said business and interstate trade and commerce in competition with Foster & Kleiser Company.

23. By inducing or attempting to induce customers of competitors to breach their contracts with such competitors by changing and reducing bids for the display of outdoor advertising matter below the prices originally offered by defendant Foster & Kleiser Company and below the prices originally offered by competitors of Foster & Kleiser Company; and said customers thereby did in fact breach their said contracts with said competitors.

24. By making false and unfair statements regarding the business, business standing, credit and integrity of competitors of defendant Foster & Kleiser Company and regarding the quality, durability and workmanship of outdoor advertising material furnished by said competitors and regarding the value and desirability of outdoor advertising sites owned or leased by said competitors for the purpose of inducing or attempting to induce customers or competitors to breach their contracts with such competitors or of preventing or attempting to prevent the display of outdoor advertising matter by competitors of Foster & Kleiser Company; and said customers of competitors did thereby in fact breach many of their said contracts and did refrain from contracting for the display of outdoor advertising matter with said competitors.

25. By granting preferences, priorities, rebates and discriminations relative to prices and terms of contracts for the display of outdoor advertising matter in favor of certain selected advertisers for the purpose of preventing competitors of Foster & Kleiser Company from carrying on their lawful business and the said interstate trade and commerce in outdoor advertising; and said competitors were thereby prevented from carrying on their said business and the said interstate trade and commerce.

26. By giving free display of outdoor advertising matter to certain advertisers for the purpose of preventing competitors of defendant Foster & Kleiser Company from transacting the outdoor advertising business and the said interstate trade and commerce in competition with defendant Foster & Kleiser Company; and said competitors were thereby in fact prevented from transacting the said business and the aforesaid interstate trade and commerce in competition with defendant Foster & Kleiser Company.

27. By compelling and attempting to compel owners of outdoor advertising structures to sell their said structures to Foster & Kleiser Company on such terms as might be determined and dictated by Foster & Kleiser Company by threatening that unless such sales were made Foster & Kleiser Company would construct and operate outdoor advertising structures in competition with the said owners.

28. By paying to the National Outdoor Advertising Bureau, an organization composed of persons, firms and corporations engaged in the business of soliciting advertising, a commission of sixteen and two thirds percent (16⅔%) on all contracts for outdoor advertising awarded or caused to be awarded to Foster & Kleiser Company by

the said bureau and paying only ten percent (10%) commission to other soliciting agencies occupying relatively the same position in the trade for the purpose of inducing the said bureau to award all such advertising contracts to Foster & Kleiser Company to the exclusion of its competitors.

29. Petitioner alleges that the effect of each of the acts of defendants herein described and of the monopoly thereby effected has been to place the business of outdoor advertising in interstate commerce throughout the Pacific Coast Area under the exclusive domination and control of defendants and to stifle and eliminate all competition among those persons, firms and corporations engaged in the business of outdoor advertising in interstate commerce as aforesaid.

30. Petitioner further alleges that each of said acts of defendants has been in and of itself unreasonable, unwarranted and oppressive.

31. Petitioner further alleges that the purpose and intent of defendants in performing each of the said acts has been to monopolize the said interstate trade and commerce in outdoor advertising throughout the Pacific Coast Area and to eliminate all competition in the course of the said interstate trade and commerce.

PRAYER

Wherefore petitioner prays:

1. That writs of subpœna issue directed to each and every defendant commanding it or him to appear herein and answer under oath the allegations contained in the foregoing petition and to abide by and perform such acts and decrees as the court may make in the premises.

2. That the attempt to monopolize and the monopoly of interstate trade and commerce in outdoor advertising as described herein be adjudged illegal and in violation of the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

3. That the defendants and each of them and each and all of the respective officers and directors and each and all of the respective agents, servants, employees and all persons acting or claiming to act on behalf of the defendants or any of them be perpetually enjoined and restrained from continuing to carry out directly or indirectly, expressly or impliedly, the monopoly of the said interstate trade and commerce in outdoor advertising described herein and from entering into and carrying out directly or indirectly expressly or impliedly any monopoly or attempt to monopolize similar to that alleged herein to be illegal.

4. That the corporate defendants their respective officers, agents, servants and employees and all persons acting or claiming to act on their behalf be enjoined from performing or continuing to perform any and all of the acts referred to in paragraphs 20 to 28 inclusive of this petition as means of effectuating the said monopoly.

5. That the defendants Foster & Kleiser Company and Restop Realty Company be required to divest themselves of all right, title and interest in and to the assets, affairs and business of the Lafon System Inc., of Los Angeles, California.

6. That the defendants Foster & Kleiser Company and Restop Realty Company, their respective officers, agents, employees and all persons and corporations acting under,

through or on behalf of them or either of them be perpetually enjoined, restrained and prohibited from acquiring the assets, affairs or business and from acquiring, receiving, holding, voting or in any manner acting as the owner of the whole or of any part of the stock or other share capital of any company engaged directly or indirectly in the outdoor advertising business until the further order of this court.

7. That the petitioner have such other and further relief as may to the court seem proper.

Samuel W. McNabb,
United States Attorney for the Southern District of California.

William D. Mitchell,
William D. Mitchell,
Attorney General.

John Lord O'Brian,
John Lord O'Brian,
The Assistant to the Attorney General.

John Harlan Amen,
John Harlan Amen,
Special Assistant to the Attorney General.

Albert J. Law,
Albert J. Law,
M. T. F.
Special Assistant to the Attorney General.

District of Columbia, ss:

John Harlan Amen, being duly sworn, says that he is a Special Assistant to the Attorney General of the United States, that he has read the foregoing petition and knows the contents thereof and that he is informed and verily believes the allegations thereof to be true.

John Harlan Amen.
John Harlan Amen

Subscribed and sworn to before me this 16th day of April, 1930.

Annebel L. Tillett,
Notary Public.

Filed Apr. 22 1930, R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

In the District Court of the United States in and for the Southern District of California Central Division

IN EQUITY, NO. R-31-M

UNITED STATES OF AMERICA, Petitioner

—against—

FOSTER & KLEISER COMPANY, GEORGE W. KLEISER, WALTER F. FOSTER, AUGUST F. LAUSEN, Jr., and RESTOP REALTY COMPANY, Defendants.

FINAL DECREE

The United States of America filed its petition herein on April 22, 1930, and each of the defendants having duly appeared by their respective counsel, the United States of America, by its counsel moved the Court for an injunction as prayed in the petition and each of the defendants consented to the entry of this decree without contest and before any testimony had been taken.

Wherefore it is ordered, adjudged and decreed as follows:

1. That the Court has jurisdiction of the subject matter hereof and of all persons and parties hereto and that the petition states a cause of action against the defendants under the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

2. That the monopoly of and the attempt to monopolize interstate trade and commerce in outdoor advertising in the manner and by the means described in the petition herein is hereby declared illegal and in violation of the said Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

3. That the defendants, and each of them, and each and all of the respective officers and directors of the corporate defendants, and each and all of the respective agents, servants, employees, and all persons acting, or claiming to act, on behalf of the defendants or any of them, be and they hereby are, perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the said attempt to monopolize and the said monopoly of the interstate trade and commerce in outdoor advertising as described in the petition herein and from entering into, or carrying out, directly or indirectly, expressly or impliedly, any similar monopoly or attempt to monopolize of like character or effect.

4. That within thirty days after the entry of this decree the defendant, Foster & Kleiser Company, be required to offer for sale at all times within the two years next ensuing all of its right, title and interest in and to such of the assets, affairs and business of the La Fon System Inc., of Los Angeles, California, as have been heretofore acquired by said defendant, in their entirety, as the same may from time to time exist at the following prices and times, to wit: at an initial price of One Hundred Fifty Two Thousand Nine Hundred Fifteen and 88/100 ($152,915.88) Dollars, up to and including August 31, 1931; at a price of One Hundred Thirty Eight Thousand

Three Hundred Twenty Eight and 16/100 ($138,328.16) Dollars from September 1, 1931, up to and including the last day of February, 1932; at a price of One Hundred Twenty Six Thousand Nine Hundred Seventy and 08/100 ($126,970.08) Dollars from March 1, 1932, up to and including August 31, 1932; at a price of One Hundred Sixteen Thousand Six Hundred Ninety Five and 86/100 ($116,695.86) Dollars from September 1, 1932 up to and including the last day of February, 1933; and thereafter up to and including the date of expiration of the said two year period at a price of One Hundred Seven Thousand Three Hundred Fifty Nine and 40/100 ($107,359.40) Dollars; each of which prices the defendants, Foster & Kleiser Company, George W. Kleiser, and August F. Lausen, Jr., and each of them, expressly represents and warrants as constituting a fair and equitable valuation of the said assets, affairs and business as the same exist or may exist on the aforementioned dates; and to publish notice of said offer of sale at least once every six months during the said two year period in at least two newspapers having a general circulation in the City of Los Angeles, California; and to file with the Clerk of this Court, affidavits of each such publication within five days after each such publication has been made; and if, as and when the said offer is accepted by any responsible individual, partnership, corporation or other party at the price then applicable as aforesaid to transfer all of said assets, affairs and business of the said La Fon System Inc., to such individual, partnership, corporation or other party upon

the payment of said purchase price and the assumption of leasehold and advertising contract liabilities attaching to said assets, affairs and business.

The defendants will maintain at all times during the said two year period for inspection by prospective purchasers a complete inventory of the said assets, affairs and business of the Lafon System Inc., and will report to this Court each and every offer or acceptance made by any prospective purchaser within five days after any such offer or acceptance has been made.

5. That the corporate defendants, their respective officers, agents, servants and employees when acting directly or indirectly for or on behalf or in the interest of said corporate defendants or either of them and all other persons acting or claiming to act on behalf of such corporate defendants or either of them be perpetually enjoined from acquiring the assets, affairs or business and from receiving, holding or voting or in any manner acting as the owner of the whole or of any part of the stock or other share capital of any company which competes with the corporate defendants or any of them in the outdoor advertising business described in the petition herein until further order of this Court.

6. That the corporate defendants, their respective officers, agents, servants and employees, and all persons acting or claiming to act on behalf of them or any of them, be enjoined from the following:

(a) Formulating, adopting and practicing the policy, either generally or with respect to particular communities,

of interfering with competitors for the purpose of preventing said competitors from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company by any of the following means, or by any means similar thereto, to wit:

Offering to pay or in fact paying for outdoor advertising site amounts in excess of their true worth and value; making fictitious offers to purchase or lease outdoor advertising sites at amounts in excess of their true worth and value; attempting to cause the cancellation or in fact causing the cancellation of leases to which competitors are a party by false representations that the said sites are desired for other than advertising purposes; attempting to lease or in fact leasing more outdoor advertising sites than are reasonably required for the proper conduct of the outdoor advertising business for the purpose or with the intent of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; leasing or attempting to lease outdoor advertising sites without using the same or intending to use the same for any purpose reasonably necessary or incidental to the proper conduct of the outdoor advertising business for the purpose or with the intent of excluding the competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; leasing or attempting to lease outdoor advertising sites

on the undertsanding that same will not be used for outdoor advertising purposes with the intent or for the purpose of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; continuously soliciting, obtaining and reporting detailed information regarding outdoor advertising sites leased by competitors by any illegal or improper means or in any illegal or improper manner and utilizing the said information for the purpose or with the intent of excluding competitors of the corporate defendants from transacting their respective businesses in competition with the corporate defendants; physically obstructing, covering, obliterating, destroying or otherwise impairing the visibility of outdoor advertising structures owned, operated or controlled by competitors; but this shall not prevent the defendant, Foster & Kleiser Company, from erecting its advertising structures upon its leased or owned advertising sites in the lawful exercise of its property rights in good faith and not for the purpose or with the intent of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; employing agents for the purpose of obtaining information and cooperation from city and county officials regarding outdoor advertising sites owned or leased or intended to be owned or leased by competitors and utilizing the said information or cooperation for the purpose or with the intent of excluding competitors of the corporate

defendants from transacting their respective businesses in competition with the corporate defendants.

(b) Formulating, adopting and practicing the policy, either generally or with respect to particular communities, of contracting with advertisers for the display of outdoor advertising matter at unfair or discriminatory prices and under unfair or discriminatory terms and conditions; that is to say, charging different prices for the same product to advertisers occupying substantially the same positions in the trade for the purpose and with the intent of excluding competitors of Foster & Kleiser Company from carrying on the outdoor advertising business and the aforesaid interstate trade and commerce in competition with Foster & Kleiser Company.

(c) Knowingly inducing or attempting to induce customers of competitors to breach their contracts with such competitors by changing and reducing bids for the display of outdoor advertising matter below the prices originally offered by defendant Foster & Kleiser Company and below the prices originally offered by competitors of Foster & Kleiser Company.

(d) Knowingly making false and unfair statements regarding the business, business standing, credit and integrity of competitors of defendant, Foster & Kleiser Company, and regarding the quality, durability and workmanship of outdoor advertising material furnished by said competitors and regarding the value and desirability of outdoor advertising sites owned or leased by said com-

petitors for the purpose of inducing or attempting to induce customers of competitors to breach their contracts with such competitors or of preventing or attempting to prevent the display of outdoor advertising matter by competitors of Foster & Kleiser Company.

(e) Granting preferences, priorities, rebates and discriminations relative to prices and terms of contracts for the display of outdoor advertising matter in favor of certain selected advertisers for the purpose of preventing competitors of Foster & Kleiser Company from carrying on their lawful business and the said interstate trade and commerce in outdoor advertising.

(f) Giving free display of outdoor advertising matter to certain advertisers for the purpose of preventing competitors of defendant Foster & Kleiser Company from transacting the outdoor advertising business and the said interstate trade and commerce in competition with defendant Foster & Kleiser Company.

(g) Compelling or attempting to compel owners of outdoor advertising structures to sell their said structures to Foster & Kleiser Company on such terms as may be determined and dictated by Foster & Kleiser Company by threatening that unless such sales are made Foster & Kleiser Company will construct and operate outdoor advertising structures in competition with the said owners.

(h) Paying to any soliciting agency whether individuals, partnerships, associations or corporations any higher rate of commissions on contracts for outdoor advertising

awarded or caused to be awarded to Foster & Kleiser Company than it pays to other soliciting agencies occupying relatively the same position in the trade for the purpose of inducing such soliciting agency to award all such advertising contracts to the Foster & Kleiser Company to the exclusion of its competitors. Provided that nothing contained in the foregoing subdivisions b, e and f of paragraph 6 hereof shall prevent discrimination in price between purchasers of outdoor advertising on account of difference in grade, quality or quantity of such outdoor advertising or that makes only due allowance for difference in the cost of sale or transportation or discrimination in price in the same or different communities made in good faith to meet competition and providing further that nothing in the said subdivisions shall prevent the defendants from selecting their own customers in bona fide transactions and not in restraint of trade.

7. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the corporate defendants herein and to any and all corporations, co-partnerships and individuals who may acquire the ownership and control, directly or indirectly of the property, business and assets of the corporate defendants whether by merger, consolidation, reorganization or otherwise.

8. That jurisdiction of this cause be and it hereby is retained for the purpose of enforcing this decree or modifying this decree.

9. That the Petitioner have and recover from the defendants the costs expended in this cause, taxed at $35.80.

DATED: Los Angeles, California: March 13, 1931.

Entry consented to.

WM. P. JAMES
United States District Judge.

SAMUEL W. McNABB
United States Attorney.

ALBERT J. LAW
Special Ass't to the Attorney General.

Entry consented to by defendants by their respective counsel.

MORRISON, HOHFELD FOERSTER, SHUMAN & CLARK,
by Roland C. Foerster
Attorneys for defendants, Foster & Kleiser Company. George W. Kleiser and August F. Lausen, Jr.

NORMAN STERRY
GIBSON, DUNN & CRUTCHER
by Norman S. Sterry
Attorneys for defendants, Restop Realty Company and Walter F. Foster.

Decree entered and recorded Mar 13 1931 R. S. Zimmerman, Clerk, By Murray E. Wire, Deputy Clerk.

(INDORSED) FILED MARCH 13, 1931 R. S. ZIMMERMAN, Clerk By Murray E. Wire, Deputy Clerk.

No. 5673-C Special Site, vs. Foster & Kleiser Plf. Exhibit No. 220, Filed 1/11 1935 R. S. Zimmerman, Clerk, By Cross, Deputy Clerk.

The court thereupon instructed the jury as follows:

Now, gentlemen of the jury, I will take occasion to instruct you at this time that the law under which we are proceeding here, in certain circumstances, which do not exist in this case, makes the litigation between the United States Government and the defendants in this action admissible. It has a certain effect. The conditions, however, do not exist in this case which render them admissible. Therefore, if any of these documents should be read or should be referred to, you will understand that they are in this case, not as evidence of any of the facts that are in issue here, except one, and that I will refer to in a moment. The plaintiff is not to benefit, nor the defendant to suffer, by reason of the fact that the United States Government has ever engaged in any sort of litigation with these defendants, or any of them. The purpose for which they are admitted is solely to establish the period of time within such actions were pending. That, naturally, is a very minor factor in the case, at least so far as the merits of the case are concerned, it has no effect at all, and does not establish anything one way or the other. You are therefore to understand, and are instructed that these records in the two civil cases have been admitted solely and only for the purpose of showing the time when the issues were pending in the two cases, were actually pending, and for no other purpose, and the admission in evidence is not to be regarded by you as evidence of anything other than that particular single fact, to wit, the period of time during which the litigation between the government and some of the defendants in this action was pending. The record in the New York case involves only Foster & Kleiser Company and not the Restop Realty Company.

Counsel for plaintiff thereupon read to the jury the caption and the paragraphs numbered I, II, III and IV, respectively, of Plaintiff's Exhibit 218.

Whereupon the court of its own motion interrupted the further reading of said petition, Plaintiff's Exhibit No. 218, and excused the jury until the following morning. A discussion was then engaged in between court and counsel, in the absence of the jury, as to the admissibility of Plaintiff's said Exhibit No. 218 already in evidence. The court reconvened on the following morning, January 11, 1935, the jury being present, and the trial proceeded as follows in the presence and hearing of the jury.

THE COURT: Note the presence of all of the jury.

THE CLERK: Yes, your Honor. Your Honor, the record should show, I understand, that this final decree should be Exhibit No. 219, that is, in the Southern District of New York.

THE COURT. Yes, all right. With respect to the questions suggested by the court yesterday afternoon, the order heretofore made admitting the so-called—give me those initials again.

MR. CLARK: G. O. A., your Honor.

THE COURT: Yes. —is set aside and, the document having been offered by the plaintiff and objected to by the defendant, the ruling will be withheld on that. With respect to the other decree, that is admitted for the purposes mentioned.

MR. GLENSOR: That is, the Southern California case?

THE COURT: Yes.

MR. GLENSOR: Yes.

THE COURT: The James case.

MR. CLARK: If your Honor please—

THE COURT: Do I state the situation correctly?

MR. CLARK: I think so. May I have an exception to your Honor's ruling admitting the second matter?

THE COURT: Yes, of course you have that.

MR. CLARK: On the grounds heretofore stated?

THE COURT: Yes.

MR. CLARK: Irrelevant and res inter alios acta.

THE COURT: That is understood.

MR. GLENSOR: Now, the Southern California complaint is admitted?

THE COURT: Yes, for the purpose mentioned.

MR. GLENSOR: Yes.

THE COURT: Which, as you understand my view, is a matter for the information of the court, in its judgment, and for its effect upon the statute of limitations only.

MR. GLENSOR: Yes. A reading of the documents in the Southern California case will not be permitted?

THE COURT: Will not be permitted. You can make the offer and take an exception.

MR. GLENSOR: Well, I offer to read the complaint and the decree in the case of the United States of America vs. Foster & Kleiser Company, George W. Kleiser, Walter F. Foster, August F. Lausen, and Restop Realty Company, defendants, No. R. 31-M in this court.

THE COURT: Yes. Your offer is refused.

MR. GLENSOR: Exception.

THE COURT: The court declines the reading of the document.

MR. GLENSOR: All right.

THE COURT: Exception to the plaintiff.

MR. GLENSOR: Yes, I noted an exception. Now, what is the situation? I understand that counsel has rather strenuously urged that the court takes judicial notice of the Southern California case, it being a part of this court's records. I am far from satisfied that that is the law. If, however, counsel cares to stipulate that the matter is before the court for those purposes without any further reading or offering, I will stop.

MR. CLARK: Excuse me just a moment, your Honor. Well, if it may be understood that we do that without waiving our exception, that is perfectly satisfactory.

THE COURT: Yes.

MR. CLARK: The court knows judicially, and should refuse evidence.

THE COURT: Very well.

MR. GLENSOR: Now, may I look at my notes just a moment ,please? I think we are through.

THE CLERK: Your Honor, do I understand that the petition and final decree in the New York case are both for identification at this time?

THE COURT: They are offered and have not yet been admitted.

MR. STERRY: Then they should be for identification?

MR. CLARK: It is satisfactory to us, your Honor, if they are marked for identification at this time.

THE COURT: That is probably the regular way of doing it.

THE CLERK: Then they will be Plaintiff Exhibits 218 and 219 for identification respectively.

MR. GLENSOR: The plaintiff rests.

At the request of Mr. Clark the jury was excused and the following proceedings were had in the absence of the jury:

Whereupon the defendants Foster & Kleiser Company and Restop Realty Company severally moved the court to direct the jury to return a verdict for the defendants, and each of them, on the following grounds, to-wit:

First, that no interference with interstate commerce in any way whatsoever has been shown, even prima facie, or by a scintilla of evidence by the plaintiff; and secondly, even assuming that any interference with interstate commerce or any restraint upon interstate trade or commerce has been shown prima facie, there has been an absolute failure of proof that damage has resulted therefrom to the plaintiff.

The court thereupon denied said motions, and each of them.

To which rulings of the court the defendants and each of them, duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 210.

(Testimony of August F. Lausen, Jr.)

January 15, 1935.

Thereupon

AUGUST F. LAUSEN, JR.,

was called as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am employed by Foster & Kleiser Company and have been since 1910. I have been a stockholder in the company since 1920. I first entered the employ of Foster & Kleiser in Seattle as office manager. Thereafter I was employed at Tacoma, Washington, as branch manager for approximately four years. When I went with Messrs. Foster and Kleiser they were doing business under the corporate name of Foster & Kleiser, Inc. At that time they had a branch at Portland, Oregon, and they had operating bases at Tacoma and Bellingham. Seattle was their headquarters.

Our sales organization located at Seattle, and Portland, developed the potential business located in those territories. Mr. Foster and Mr. Kleiser made trips to California and to the East to develop our business with advertisers located there.

At that time neither Foster & Kleiser, Inc. nor Foster & Kleiser individually had any plants outside the states of Washington and Oregon. That situation continued until 1915.

In the latter part of 1914, J. Charles Green, who operated the plant of the J. Charles Green Company at

San Francisco, died and left his business in a very unsettled state. His outdoor advertising business was bankrupt, in the hands of creditors, and the service was deteriorating to a very low degree. The poor condition of the Green plant affected the outdoor advertising business in our plant at Tacoma. In addition, there was a situation in Los Angeles which seriously affected us in Seattle. The ordinances there were such that they, in effect, prevented the advertiser from really getting the service that he wanted in the Los Angeles territory. If he could not get it in the Los Angeles territory and he wanted it throughout the Coast, he refrained from placing his appropriation. The condition of the Green plant at San Francisco was such that no one wanted to buy that class of service. Even though we were delivering a higher class of service than that, the man who was located in San Francisco felt that in all probability he would get the same class of service in other places.

I know that neither Foster and Kleiser individually nor the corporation Foster & Kleiser, Inc. had any desire to come into San Francisco and purchase the Green assets.

In the construction of our plant in the Northwest, Foster & Kleiser, Inc. followed the standards that were laid down by the Associated Bill Posters and Distributors of the United States and Canada. The function of that organization was to have its members build their plants in accordance with the plans and specifications that had been developed by that association for use by all its members throughout the United States, so that there would be a uniformity of plants and service. J. Charles Green had not maintained his plant according to the latest

(Testimony of August F. Lausen, Jr.)

specifications under which we were then operating. When I came to California I was made the manager of the corporation that was then formed to take over the assets of the J. Charles Green Company in San Francisco. That corporation was Foster & Kleiser of California. It stayed in business about one year and was succeeded by Foster & Kleiser Company, which is the defendant in this action. It took over the assets of Foster & Kleiser of California which were at San Francisco and the assets of Foster & Kleiser, Inc. which were in Oregon and Washington in the cities I mentioned.

Generally speaking, when I took up my duties here with Foster & Kleiser of California, the condition of J. Charles Green with respect to leases and lease rights was very bad. There were practically no leases in existence. The structures were built on locations purely by sufferance or by a verbal permit. He had only a very small percentage of written leases. That condition prevailed generally in San Francisco with the J. Charles Green locations. As a result of that condition, a concern by the name of Ellert & Stevens secured many of the locations which were occupied by structures that had belonged to J. Charles Green Company. Ellert & Stevens had formerly been employed by the J. Charles Green Company. When Foster & Kleiser of California first came into business down here, there was no systematic record of leases and cards describing property, that I know of. The information about leases was kept in memoranda form and practically all of it in the leasemen's heads. Our first step with respect to the J. Charles Green plant was to lay out a plan of rebuilding the important arteries of travel according to the latest

standards which were then in vogue and the latest approved standards that had been approved by the National Association, which I just mentioned which had solely to do with posting.

I have been in the outdoor advertising business since 1910 and have not been in any other business during that time. I have been general manager of Foster & Kleiser Company since 1916 when it was formed and am now secretary and general manager.

The present twenty-four-sheet poster panel and twenty-four-sheet poster were brought into use by the National Association. The purpose of that was to standardize the size of posters throughout the country, which would be very much more effective than the old way where we had four-sheets and eight-sheets and sixteen-sheets mixed up together on the same board. Before the thing was standardized, if we had a board 100 feet long we would post a four-sheet in one place and an eight-sheet in another and then a twenty-four-sheet; it was a conglomeration. The standardization of the twenty-four-sheet poster panel and the twenty-four-sheet poster itself, so far as the size is concerned, made the sale of the medium very much easier. It resulted in uniformity of presentation throughout so far as size was concerned. Before that a solicitor might go in and recommend the use of eight-sheets to an advertiser. Another man would go in and recommend twenty-four sheets to the same advertiser, and there was no uniformity of presentation of the medium to the advertiser until the posters were standardized and made uniform throughout the country.

(Testimony of August F. Lausen, Jr.)

During all the time I have been in the outdoor advertising business the outdoor advertising medium has been in competition with all the other media of advertising, such as newspapers, magazines and street cars, and when radio came in we were in keen competition with that. Foster & Kleiser Company has engaged in the paint business also and is now engaged in it along with the poster business. Painted displays are sold as selective showings in units from one unit up. The advertiser chooses his paint display and selects his locations according to the commodity which he is selling. It is not a general coverage. Painted bulletins are sold one or more at a time according to the commodity which the advertiser is advertising and the extent to which he wants to advertise it. It is now a national medium but not to the extent that it was ten years ago. The poster has supplanted it. Poster advertising is sold in what we call showings. A plant in a town is laid out into showings and the size of those showings depends upon the conditions in the city. The size is dependent mostly upon the population and circulation. The plant owner decides what he feels is a proper coverage to cover the entire circulation over the principal arteries of the city. Foster & Kleiser Company has decided that question by making a thorough survey of the city and making traffic counts and watching the flow of traffic and seeing to it that all of the circulation on the primary streets is properly covered. They have zones on those streets. We have made a very careful study of that and we have a man who does nothing but that. We engaged our engineer back in 1916 or 1917. We felt that the old haphazard method of building a plant

was bad because we had gone through a very trying experience just prior to that. About January 1, 1916, they had a very severe wind and rain storm in San Francisco and a considerable part of the plant blew over and injured some people resulting in the death of one person and it was a very serious situation. They used to have carpenters go out and build the plants the way they wanted them. Sometimes they put the anchor holes down a foot or two to save trouble or they would skimp on their work. We therefore felt that it was just as necessary to have an engineer in laying out the plans for the building of our structures as it was to have an architect plan a house. That was his job and then we began to give study to traffic flows and traffic and zones. That was under the engineering department and is now. There has been quite a development along those lines because all advertising is sold on circulation. That was the way advertisers were buying advertising in the other media and we have now developed to a point where they can buy advertising in the outdoor medium by circulation, that is, traffic count. That has now been developed, and there is a new organization called the traffic audit bureau which is to our medium like the audit bureau is to the newspaper and magazine field. The function of that traffic audit bureau is to check up on the traffic flow past showings and panels and certify to that flow. It is just in its infancy now. That is what it is going to do.

After we became established at San Francisco the ordinance situation at Los Angeles caused Foster & Kleiser very great concern. In 1917 the Los Angeles city council enacted an ordinance which, if it had remained in

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effect, would have practically put the outdoor advertising business in Los Angeles out of business. That would have affected San Francisco because it is in this area, and it is our experience in the outdoor advertising business that one ordinance of that nature will spread to other communities. As a matter of fact, it might have spread all over the country. The Los Angeles situation was caused by the building of boards in localities where those boards did not belong, that is, in residential districts. Foster & Kleiser Company has never in its career done that. We have endeavored in all cases to keep out of residential districts not only because the law required it but also because it was good judgment to do so. With reference to the Los Angeles situation, Mr. Kleiser was in frequent conferences with Thomas H. B. Varney who owned a plant here in Los Angeles and in Oakland. Mr. Kleiser told me about those conferences. I was not present at any of those in 1917 but I was in 1918. That ordinance was passed and there was a year's grace given by the council in order to allow Varney to conform to the ordinance. It was during that year that Mr. Kleiser, knowing that if the ordinance went into effect and got before the supreme court of the state, that court would sustain it. If that had been the case, it would have been a very serious matter to Foster & Kleiser Company and to all the companies throughout the country who had very heavy investments in this business. Mr. Kleiser told me that if he could not get Varney to take proper steps to get the ordinance modified, that he was going to talk to him about buying his plant. Mr. Varney wouldn't or couldn't or didn't know how to take the steps to get the ordinance

modified. After many conferences a plan of purchase was agreed on and that plan was finally consummated. I know that of my own knowledge.

As general manager of Foster & Kleiser Company I had charge of the details of the finances and kept Mr. Kleiser informed at all times as to our financial side. The deal for the Varney plant was consummated as of April 1, 1918. At the time the plant was bought the adverse ordinance situation in Los Angeles existed. I came to Los Angeles upon the acquisition of the Varney plant. My first job was to take over the organization here and see that our system of accounting and all our methods of doing business were installed here in the Los Angeles office. We had to do that very hurriedly because the Varney business ceased on the night of March 31st and we began on the morning of April 1st. The Varney plant was in very bad condition. Its upkeep and the appearance of the display was very bad. It was constructed all over the city. There were lots of structures in the residential districts and places of that sort and they were really what caused the ordinance trouble here in Los Angeles. Most of the billboards were constructed right on the ground but very, very few of them had been raised. The first thing we did was to tear down a considerable footage and abandon the locations. Most of this footage was located in the residential districts. We either threw the material away or salvaged it if there was any salvage to be had out of it. We got the ordinance here in Los Angeles modified and we immediately tore down at least one-third of the plant. We signed notes for a million dollars to pay for the Varney plants in Oakland and Los Angeles. We actually

paid about $750,000. The money was payable in installments. If it was paid by a certain date, it was one amount, if we paid it by another date, it was another amount. I think there were four different statements there. In other words, it was bought entirely on credit. The Green assets were bought with money borrowed by Mr. Foster and Mr. Kleiser individually. Foster & Kleiser Company rebuilt the Los Angeles plant according to the standards prescribed by the Association in vogue at that time. The name of the Association had been changed from the Associated Bill Posters and Distributors of the United States and Canada to the Poster Advertising Association of the United States and Canada. The Poster Advertising Association had to do solely with posting. It did not go out and sell any advertising in the sense of taking contracts from an advertiser. It promoted the use of the media. The promotion of the use of the outdoor advertising media was its sole purpose really and to increase the use of the media in comparison with other mediums of advertising. It was really a trade organization. It gathered statistics from all its members pertaining to the plant itself, the facilities, classes and general conditions surrounding the market area. That information was put into statistical form and placed in the hands of the sources of the business, the solicitors and agencies for outdoor advertising space. Poster Advertising Association stimulated the use of outdoor advertising by means of the standards of which I have spoken. One of the strong selling points of the medium was the standardization from a physical standpoint. Every plant owner built his panels according to the same blue print and specifications so that if a man was

buying a showing throughout the United States he could buy that at his desk in New York and feel confident that he was going to get what he bought without having to go and inspect all of his panels or showings. He got a uniform showing all over the United States, every panel was of the same size, built under the same blue print, and posters were according to the size that had been adopted by the Engravers & Lithographers Association. Membership in the Association in the old days was called a franchise. It is sometimes called a franchise now. The name of the Association at the present time is the Outdoor Advertising Association of America. That Association is the result of a merger of the Poster Advertising Association and the Outdoor Advertising Association. Before its merger with the Poster Advertising Association, the Outdoor Advertising Association was a paint association. It had to do with painted displays. It differed from the Poster Advertising Association in that its members were engaged in delivering a painted display service. Foster & Kleiser Company, delivering both a painted display service and a poster advertising service, had a membership in both associations.

We organized a national sales department which was composed of men who devoted their time exclusively to contacting large advertisers located here on the Pacific Coast for the purpose of developing sales in California. We organized it within a year after we came to San Francisco. I think it was really started in 1915. That is when we opened up business there. It was a department of Foster & Kleiser Company, in ordinary terms, a sales department. As far as I know, no other outdoor advertis-

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ing concern on the Pacific Coast had anything like that. That department dealt with a number of large Pacific Coast concerns. We did not solicit their business for the sole purpose of displaying it on Foster and Kleiser Company plants alone. The primary object was to sell the space that we had for sale. But in the case of those large advertisers we could not interest them to buy locally or in isolated spots. We had to talk advertising to them in a broad sense over the entire Pacific Coast area; that is, Washington, Oregon, California and Arizona, which is part of the Los Angeles trade area. In those days we did not have plants outside of the principal cities such as San Francisco, Oakland, Los Angeles and the surrounding country. We had the plants in the Northwest which I have mentioned. Foster & Kleiser Company delivered a Pacific Coast-wide service by subletting what business we had for plants other than our own to the operators in those towns and cities. At a guess I would say that there were probably one hundred plant owners outside of the plants owned by Foster & Kleiser Company in the Pacific Coast area. Our experience in subletting this business to various plant owners was that numerous complaints were made to us by the advertiser for lack of service. There were two or three general complaints, for instance, if a man contracted to have his showing go out on the first of the month and the paper did not go up until about the 10th or 12th, it was a serious matter as far as the advertiser was concerned because he usually tied up his advertising in the outdoor medium with the advertising in the other medium, and his general sales campaign depended upon his tie-up all the way through. Besides that, we were not

carrying out our contract because we were in a way responsible. The advertiser made the contract with us and we sublet it to others. He was dealing with us. Then again if the paper started to tear and was allowed to remain that way, it became ragged and was ruined. In some cases the paper was not posted at all. I think it was nevertheless billed for in some cases even if not posted. That was not at all unusual in those days with some plant owners. I would not say it was general but sometimes a man made a mistake in his bookkeeping or something. We endeavored to get these plant owners to conduct their business in a businesslike way, that is, to improve their plants. At that time the modernization of plants was going along at a pretty good speed and some of these plant owners were not keeping abreast of the time. The rules of the Association provided for panels, and some of them were still carrying on the old style long wooden boards, not even steel facing in a good many instances.

The greatest volume of advertising of all kinds, including outdoor advertising, became very apparent along about 1921 or 1922. After the war we had a depression of about two years duration or more. There was a tremendous amount of goods on hand that had accumulated as a result of the war as, for example, automobile tires and foodstuffs and things of that kind. The factories had been requisitioned by the government to produce goods for the government almost exclusively and at the end of the war they had tremendous inventories on hand of both finished and raw materials. It became necessary to make a very intensive effort to remove those goods and advertising was used as one of the means to move those goods and

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turn inventories into cash. I don't know whether outdoor advertising through the efforts of the sales organizations in the East was getting its entire share, but the volume was increasing very rapidly. Foster & Kleiser felt that increase in volume. In trying to get these plants to whom we sublet business on the Pacific Coast to improve their service, I talked with all of these plant owners. We had meetings and talked with them all but I have a distinct recollection about Sacramento. The service up there was very poor. Besides that, there were rumblings of agitations because Sacramento was the capital of the state and the advertising was in evidence there before the legislators all the time. The service and the physical condition of the plants were very, very poor. Santa Barbara was the same way. It is an important point because it is a highly residential city and the home of very wealty people, manufacturers, merchants and other potential buyers and users of the medium from the East, and the plant there was in a very delapidated condition. We had difficulties with our sublet contracts on the Temple plant at Santa Barbara. We had talked with the plant owner about it and got no practical results at all. We saw that we were not getting very far in our efforts to induce these plant owners to invest additional capital in the rebuilding of their plants and the relocating of their structures so as to get on the prominent business thoroughfares where the circulation really was. That was one of the drawbacks to some of those old plants. They were not in evidence. They were on secondary streets, in the back alleys or around the freight yards. The advertiser wanted to have his posters in evidence and the only way to get them into evidence was

to put them were the people are and where the buying power is. Another thing was that with the increase in business a great many of these plant owners did not increase the capacity of their plants so that they had to turn down orders. That is a very severe drawback to the solicitor for the producer of the business because when he sells a contract if he can only deliver fifty to sixty per cent of it the advertiser doesn't want it at all. That was one of the serious things. I don't remember that any of the plants to which Foster & Kleiser sublet business were competitors of Foster & Kleiser Company. As far as I now recall we did not have a plant in any town in which we sublet business. As a matter of fact, I can't remember any plant owner that was doing a poster business in the towns in which we operated. The increase in business which we were getting was mostly posting, although there was a considerable volume of paint at that time. When we failed to get any results in the improvement of the service in the plants to which we were subletting our business, we felt that our next step was to put ourselves in a position to deliver that service. If Foster & Kleiser Company did not put itself in a position to deliver the service, there was no one to deliver the service that the advertiser demanded. Foster & Kleiser Company proceeded to buy those plants. We bought one or two prior to 1918 and 1919. We bought Ellert & Stevens at San Francisco in 1915 or 1916, and also Jack Shean's plant almost simultaneously with the Green plant. He had what you might call a specialty plant in San Francisco consisting solely of rough bulletins. Ellert & Stevens temporarily made a success of their business during the fair because

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there was a considerable amount of business that was given to it by the Panama-Pacific Exposition that was going on at that time. Practically all of their business was fair business and after the fair was over they did not have so much business and they went broke. They then came to us and asked us whether we wanted to buy them out and we bought them. They went into business then at San Jose. They borrowed the money to buy that business at the bank and Foster & Kleiser Company endorsed the note. They did not make a success of that business. They allowed it to run down and they were losing contracts and not meeting payments at the bank, and they again came to us and wanted us to take them over. That was done.

In acquiring the plants we did not necessarily buy only association plants. There were not any non-Association plants doing any poster advertising business.

A competitive outdoor advertising plant is a plant which is located in the city in which we are doing business and competing with the service that we are rendering in that city. On that basis, of the plants shown on plaintiff's Exhibit No. 1-Z, the following plants were competitive plants: The Western States Advertising Company, which was taken over practically at the same time we took the Green plant although they were in competition with Green. That was located in San Francisco. We took it over in the same month that we took over Green so I would consider that a competitive plant of Foster & Kleiser. We had the Outdoor Advertiser. That was a small plant in San Francisco. Coast Advertising Company; that is the Ellert & Stevens outfit. They were doing business under that name.

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In 1921 we took over Erskine and LaFon. That was a competitor here in Los Angeles. We got two plants in Sacramento, the Funk and the Caswell plants. They were in competition with each other up there. We were not operating. Funk came to us and wanted to sell his plant and we bought it and then I guess we were in competition with Caswell but we bought him very soon after we bought Funk. Funk is our Sacramento branch manager today and has been since we took his plant over in 1921. Other competitive plants that we acquired were the Reimer Advertising Company. They did solely a three-sheet business in San Francisco. I don't know whether that is competitive or not. Next is George Mann. He did a three-sheet business here in Los Angeles. We took him over in 1922. In Long Beach we took over Winkler and Whited. They were competing with each other. We took them both over at practically the same time. Then we took over D. R. Branham in July, 1923. That was a painted display plant. They dealt in painted bulletins. We took over F. A. Urban in February, 1924. He was a competitor. None of these plants were poster plants except the three-sheet plants. None of them were twenty-four-sheet poster plants, and none of them had any facilities for a twenty-four-sheet poster. The twenty-four-sheet poster had become standard at that time. Then there is the Union Advertising Company and Allen and Watt in Los Angeles. They were taken over in March 10, 1924. We had closed the negotiations for the purchase of that plant some three or four months prior to that. The Union Advertising Company was a corporation and had quite a number of stockholders and we did not close the transaction until they got the

written consent of the majority of the stockholders to authorize a transfer of the properties. The plan of purchase had been decided upon long before March 10, 1924, subject to the consent of the stockholders and subject to their being able to deliver it free and clear. The Union Advertising Company had some posters. Allen and Watt did not. Allen and Watt at one time was a separate concern and the Union Advertising Company took them over. The fact is they were the same thing at the time the negotiations were going on. The next is the DeLuxe Advertising Company, acquired October 3, 1924. That was a competitor in painted display. Here is the Carter Poster Advertising Service. That was acquired June 6, 1925. They were highway operators. Here is a competitor, McKenna, at Tacoma, taken over on November 19, 1925. I, myself, personally supervised the acquisition of these plants. Reports concerning negotiations were made to me from time to time by those conducting the negotiations. I had to approve all the transactions before they were finally approved by Mr. Kleiser. Here is the Yakima Sign Service. He had some highway bulletins near Yakima, Washington. We acquired him in October, 1926. The Highway Display Company in November, 1927. That was in Los Angeles. He was in the painted display business. Stewart Sign Service in the commercial sign business up around Santa Maria, California. He was not really a competitor. He had some locations and he wanted to get out of the business and we paid him and took over his plant. We took over the Strand Advertising Company, a three-sheet operator in Portland, in March, 1928. In those days theatres were practically the sole users of three-sheets. It was purely a local matter. Another competitor was the

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Doddington Advertising Company, Fresno. He was a commercial sign painter and not really a competitor. He had some small highway boards and some locations that we could use so we took him over. We took over the Acorn Sign Company on July 15, 1928. That is in Portland. He had a few poster panels. Catherine M. Thom had some small signs along the highway around Stockton. F. B. Heider was doing a paint business in the Bay area. That was in July, 1929; and then we have the Coast Advertising Company in Oakland in March, 1930. We bought that plant from the receiver in bankruptcy. In April, 1930, we took over the La Fon System in Los Angeles. That is the last one on my list. I missed J. R. Owens, the Elevated Sign Company of Seattle. We acquired that on Jauary 19, 1922. As far as that list is concerned, by the cursory examination that I have made of it, I have told you all the competitors that were acquired down through 1930 to the present time. I personally had the immediate direction of the acquisition of practically all of these plants in the negotiations. Mr. Kleiser was interested in some of them and handled them personally. With reference to the plants with which we were not in competition which we took over, we had the alternative of acquiring them or we could have built our own plants. We never built our own plant or a competing plant in a community in which we had been subletting business, nor did we ever threaten to build a competing plant in such a community. I think the acquiring of them in the long run was much cheaper than building our own.

Sniping is the posting of posters indiscriminately around a town on places like sides of buildings or barns or places

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that are not really built for the accommodation of posters. During the period I have been connected with them, Foster & Kleiser Company has never engaged in that sort of thing at all. Our company has been unalterably opposed to sniping, ever since I have been connected with them. That opposition has been manifested by endeavoring to clean up all those spots either by getting permission of the property owner to use the location for a poster panel or else cleaning them up and painting them and marking in stencil on them "Post no bills". We have followed the policy of leasing such locations for the purpose of cleaning them up and marking "Post no bills" on them. I never heard of any of our competitors who do that sort of thing. If, instead of buying out the non-competing plants that we did buy out, we had constructed our competing plants in any of the cities in which a non-competing plant existed, we could have obtained a membership in the Outdoor Advertising Association or its predecessors, the Poster Advertising Association, and the Paint Association at any time during the years 1921, 1922 and 1923 when we were acquiring all these plants, and at any time subsequent to those years. It is a fact that there could be two or more memberships of competing outdoor advertising companies in the same communities from 1924 on until the present time. That is, through to the present time. That has been true at all times since some time in the spring of 1916.

Foster & Kleiser has eleven branches in its organization. We had four branches when we formed the corporation, located in Seattle, Tacoma, Portland and San Francisco. Upon the acquisition of the Varney properties we opened a branch in Oakland and one in Los Angeles. Later we

acquired branches at Long Beach, Sacramento, San Diego, Fresno and Medford. Each branch is in charge of a branch manager and all, except the four small branches, have a lease manager.

Our biggest year in the outdoor advertising business ended with our fiscal year March 31, 1928. It was growing up to that point and after that it dropped off. In the peak years on the Pacific Coast Foster & Kleiser delivered an outdoor advertising service in 607 towns, large and small, distributed throughout these various branches.

The National Sales Department, which was afterwards called the General Sales Department, was run entirely separate from any of the branches. It was under the management of the General Sales Manager and the function of that department was to take care of all of what we termed Pacific National Accounts, being the larger accounts on the Pacific Coast that had a wide distribution. Distinct from that we had what we called our local sales department in each branch that handled the local accounts. When the National Sales Department got business, it sublet the entire contract, whether it went on the plants of Foster & Kleiser Company or on the plants of other companies. That department was paid a commission by the branches of Foster & Kleiser Company just as it was paid a commission by any other plant owner. We abolished that department in 1929 because we had men working under the general sales manager located in San Francisco who were stationed at these various branches and were not under the control of the branch manager whom we held responsible for the development of that territory. For example, we held the branch manager at Los Angeles re-

sponsible for the development of sales in the Los Angeles territory, but we had the National Sales Department there operating as a department of the general office in San Francisco with a representative at Los Angeles, and that representative was reporting directly to San Francisco and not to the manager who was really held responsible for the development of this territory. Accordingly, we decided that the proper thing to do was to make the branch manager responsible entirely for sales in that territory, whether national or local or any other kind. Furthermore, the managers objected to paying a commission to the general sales department of the general office on business.

That change in the national sales effort did not have any relation at all to the General Outdoor Advertising Company or to the Bureau or to any other producing or selling agency except Foster & Kleiser Company.

An agency is an advertising counsellor. It is a group of men who have made a study of advertising in all of the media and their object is to secure from the advertiser his entire appropriation for advertising. He advises with the advertiser as to how that appropriation should be apportioned or used solely in one way or in two ways or in various ways. We have four major media of advertising, that is, newspapers, magazines, radio and outdoor. An advertiser having a million dollars to spend, the agency will lay a plan before the advertiser as to what he proposes to do with his million dollars. So much of that might be for newspapers and so much for magazines. He might use the entire million dollars in those two ways or he might put some of it into radio or into outdoor advertis-

ing. The agency studies the problems of the advertiser and knows his merchandising, manufacturing and distribution problems and he advises as to what this money should be spent for. A general agency is an agency that advises advertisers with respect to all questions of advertising media. Since 1917 most of the national outdoor advertising business has come through two sources. At that time the principal source was what we would call the national solicitor who devoted his time exclusively to the sale of outdoor medium. Some business came through agencies. It was about that time that the National Outdoor Advertising Bureau was formed to handle the outdoor portion of the business which was created by the general agencies. The origin of these national solicitors, who devoted their efforts to selling the outdoor medium exclusively, goes back to the time that the national association licensed a certain group of men to solicit business for the plant owners that were members of the association. The Poster Advertising Company was composed of a group of these exclusive national solicitors. When it was organized, it took in a group of six or seven men who were producing the largest amount of outdoor advertising that was being done in the country. In other words, the Poster Advertising Company was a corporation devoting itself exclusively to the solicitation of outdoor advertising accounts. That is to be distinguished from the Poster Advertising Association. That was a trade association. The Poster Advertising Company was a business corporation for profit. Foster & Kleiser Company has never had any agreement with the Poster Advertising Company in any form, express or implied, to the effect that all of the business solicited by the

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Poster Advertising Company would be placed on Foster & Kleiser Company boards. It has never had any such agreement that any of the business solicited by the Poster Advertising Company to be placed on Foster & Kleiser boards. The Poster Advertising Company was made a part of the General Outdoor Advertising Company when that was formed in 1925. Foster & Kleiser Company has never had any agreement of any kind with the General Outdoor Advertising Company to the effect that all or any part of the business solicited by the General Outdoor Advertising Company should be placed on the boards of Foster & Kleiser Company.

The National Outdoor Advertising Bureau is composed of a number of general outdoor advertising agencies and its function is to distribute for those agencies that portion of the advertising appropriation that is to be executed on the plants of outdoor advertising operators. Foster & Kleiser Company has never had any agreement of any kind or character, express or implied, with the Bureau or with the agency members of the Bureau that all or any part of the business passing through the Bureau would be placed on Foster & Kleiser Company boards.

A stock poster is a poster that is manufactured by a lithographer to be used by retailers. They carry a design and that design is reproduced on the poster leaving a blank space for the name and address of the advertiser. A service poster is practically the same thing, only it is handled in a different way. The only concern I know of that handles the service poster is the Donaldson Lithographing Company. Their representative calls on the advertiser who is usually a retailer in various com-

modities and endeavors to induce them to use these posters as a means of advertising. He endeavors to get them to use the service, which includes the posters, as distinguished from the posters themselves. The Donaldson Lithographing Company has control over the poster in that they will only sell one design or one poster in a town. In other words, if he sells Mr. Smith, the shoe dealer, that ends the sale of that shoe poster in that town. He won't sell that poster to Brown who is in the shoe business in the same community. The stock poster would be sold to an advertiser who could buy them in any quantities and he could use them in any way and any place and any time he wanted them. The method behind the service poster is that it is sold to the advertiser and the lithographer really has the say as to when and how they should be used. Foster & Kleiser Company bought stock posters about twenty years ago and resold them for their own account. We have never bought any service posters from Donaldson. Not outright. We might have arranged with Donaldson to purchase those posters for the advertiser but they belonged to the advertiser. We did not purchase them for our own account but for the advertiser's account. As I understand Donaldson's method of doing business, Donaldson would not have sold Foster & Kleiser Company any service posters nor would they have sold them outright to any plant owner. He limits the sale of these service posters to the advertiser. Donaldson did not pay Foster & Kleiser a commission for selling service posters. We paid Donaldson Lithographing Company a commission on the amount of space that was used to accommodate those service posters. The advertiser paid for the posters

themselves. Foster & Kleiser Company did not have any agreement or arrangement of any kind with the Donaldson Lithographing Company to the effect that the Donaldson Lithographing Company would not permit its service posters or posters of any other kind to be displayed on any plants other than Foster & Kleiser Company's plants. We never had any arrangement with Donaldson Lithographing Company of any kind, express or implied, to the effect that Foster & Kleiser Company was to be the sole means or medium through which Donaldson would dispose of its service posters in the Pacific Coast area or any place else.

I know Mr. Charles King. I have had a conversation with him about the acquisition of stock in the Special Site Sign Company. It was a long time ago in the spring of 1920. You showed me some stock certificates dated March 19, 1920. The conversation which I had with him was prior to that date. The conversation took place in our office in San Francisco on Valencia Street. There were present Mr. Charles King, his brother, Joseph, Mr. Kleiser and myself. I think Mr. King called on me just prior to this conference in reference to that matter. My recollection of the first conversation is that he called and mentioned the fact that a Mr. Potter, who was a half owner in his business, had talked to me with regard to the sale of the stock which was owned by Mr. Potter. I don't recall just how this conversation really came about but I know that it resulted in my suggesting that they take the matter up with Mr. Kleiser. The four of us then met with

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Mr. Kleiser and the substance of the conversation was this: That they wanted to sell that stock and Potter had already talked with me about it. Mr. Kleiser told Mr. King that Foster & Kleiser Company was not interested in buying the stock and that we never bought any stock in the purchase of any plants. He then suggested that perhaps a way out would be to purchase the entire business of Special Site Sign Company. They did not want to entertain any such proposition as that. Mr. Joseph King felt that that was a business that they would like to continue to hold and operate. He said that they felt that it was an opportunity there, that they never expected to grow very large but it was really a business that they would like Charley King to continue in. That it was a nice occupation with a good future in a small way. It wound up by Mr. Kleiser agreeing that he and Mr. Foster would take that stock off their hands for $7500.00. The windup of it was that the stock was to be made out in the names of Charles King as trustee and Joseph King as trustee for twelve shares each. I recall why the certificates were made out to them as trustees. Charles King or Joseph King said that they did not want to relinquish control of the company. Mr. Kleiser said, "Well, Charley, we are not interested in the control. We don't want to run the company. Have the stock made out any old way." I think I have told all that I recollect of the conversation. At no time did Mr. Kleiser hammer on the table. At no time did Mr. Kleiser say that he or "we" were interested in getting all the advertising business, nor did he say anything to that effect. The Special Site Sign Company was dealing almost exclusively in highway displays and had various size structures. It was not really in

(Testimony of August F. Lausen, Jr.)

competition with Foster & Kleiser Company. Their class of structure was not our standard. They did not get business from the some class of the advertising trade as we did. They were dealing with customers who did not want to pay the price that we were charging for our service. They had a cheaper service. My recollection is that Mr. Potter owned the stock and wanted to sell it to us. Mr. King held that Potter was negotiating with us and he and his brother came over. Special Site Sign Company or Charley King did not have the money to give Potter, as far as I know. That is the reason they called on us, to see whether we would put our money into it, but we, as far as the company was concerned, were not interested in it. I, as general manager, was in charge of the finances of Foster & Kleiser Company. Foster & Kleiser Company never paid for that twenty-four shares of stock or any of it. I know that of my own knowledge. The certificates of stock were delivered to me in the lobby of the Palace Hotel in San Francisco. This was not a deep dark secret. Mr. Kleiser mentioned the fact that it was not to be generally known but it very soon became known. The Palace Hotel was suggested as a convenient point of delivery because it was downtown and we were way out of town there and the Wells-Fargo Bank, where Mr. Foster and Mr. Kleiser carried their accounts, was opposite the hotel. When I received the certificates I put them in Mr. Foster's and Mr. Kleiser's box in the Wells-Fargo Safe Deposit Department. This certificate No. 10 of Special Site Sign Company stock dated March 19, 1920, is one of the certificates which I received at that time. This certificate No. 11 dated March 19, 1920, for twelve shares is one of the certificates I received at that time.

(Testimony of August F. Lausen, Jr.)

Mr. Clark with the consent of Mr. Glensor thereupon stated the substance of said certificates as follows:

Certificate No. 10, Special Site Sign Company, reads as follows: "Oakland, California, March 19, 1920. No. 10. Capital, 30,300 shares, $100.00 each. This certifies that Charles H. King, Jr., Trustee, is the owner of 12 shares of the capital stock of Special Site Sign Company, transferable on the books of the company by endorsement hereon and surrender of this certificate. Signed, J. H. King, Secretary. Charles H. King, Jr., President."

Endorsed on the back, "Charles H. King, Jr., Trustee."

Certificate No. 11 reading in the same way, except that the owner of the stock is J. H. King, Trustee, and for the same number of shares, 12 shares; the certificate is signed "J. H. King, Secretary", and "Charles H. King, Jr., President."

Foster & Kleiser Company never made any attempt to exercise any control over the voting of those shares evidenced by those certificates. As far as I know, George W. Kleiser never made any attempt to exercise any control over the voting of those shares. Neither did Mr. Walter Foster or any of them. When I received these shares in the Palace Hotel the conversation lasted a very short time, probably not more than ten minutes. I can't recall any specific conversations. We probably talked generalities and I took the stock and looked at it and passed the time of the day and departed. I did not say to King at that time, "I want to warn you, King, we are out to get you." Nor did I say anything in substance similar to that. I did

(Testimony of August F. Lausen, Jr.)

not give him any warning at all about anything, I had no occasion to. I have absolutely no recollection of saying anything to him at all about the so-called Hamlin location down the peninsula. I have no recollection that the Hamlin location came up for discussion at that time. I know very well what the Hamlin location was, and I knew the condition of it. I had seen it many times. The structures that were on there were a mess of structures of all sizes and shapes. I don't know how many but there were plenty and they were in a very poor and dilapidated condition. There was considerable agitation about that and other locations down the Peninsula from Women's clubs in those towns like San Mateo and Hillsboro. They were filing protests against the desecrating of the landscape, as they called it. They came to us. There was one woman, a Mrs. Ginn, who was very prominent in women's affairs, who was in communication with Mr. Roy McNeill on the subject. I don't think that Foster & Kleiser Company had any lease interest in the Hamlin location on March 19, 1920, or any boards on it. I was informed that Foster & Kleiser Company subsequently acquired lease rights on the location. I did not say to Mr. King in substance or effect, "We are going to get the Hamlin location if it costs us 10,000.00".

After the acquisition of the stock in the Special Site Sign Company, an audit was made of the books of that company. I don't remember any list of locations of the Special Site Sign Company which accompanied the audit. The audit was made shortly after the stock was acquired.

I know Mr. Austin Cordtz and I have met his father, Robert W. Cordtz once. I met Austin twice. The first time I met him was in Los Angeles shortly after we took over the Varney plant. The next time I met him was down

(Testimony of August F. Lausen, Jr.)

in San Diego right after we took over the McClintock plant in December of 1923 or the very early part of January, 1924. My recollection is that Austin Cordtz sent word through someone connected with the organization that he would like to see me. He subsequently called at my room at the U. S. Grant Hotel and brought his father along. The conversation drifted around to McClintock. Young Mr. Cordtz stated that they had always experienced difficulty in getting along with Mr. McClintock. They were in rows and lawsuits all the time over the fact that we had come into the field and McClintock was going out and that it might make some improvement in his operating down there. He said that they were glad to have our method of selling put into effect there because he felt that that would help him in his sales. He mentioned that he would like to make an arrangement with me whereby he would not enter into any competition with us in either sales or leasing. I told him we could not do that because it was not a practical way to work. We would be more or less bound to call him up every time we wanted to sign a lease on a location and see whether he was working on the same thing, and the same thing would apply in the sales. That led me to believe that he was leading up to the question as to whether we were in the market to take over his plant. I suggested that perhaps it might be advantageous to him and to us that he put his properties in with us. At that time we were just about ready to remodel the San Diego plant and it would be a logical time to make a job out of the whole thing and make one good outdoor advertising plant. I also mentioned the fact that we were building an organization and we were always in the market

(Testimony of August F. Lausen, Jr.)

for good men and that I felt that there would be a place for young Mr. Cordtz in our organization; that he had had considerable experience in the outdoor field which would be valuable to us and enable him to occupy a position of some importance. He said that the objection to that was that his home was in San Diego and that he had lived there all his life and had a family there and owned property and that it would be a drawback if he had to leave San Diego. I could not assure him that he would not have to leave San Diego. The terms of purchase were not discussed at all. They said they would think it over that night, and went away. Austin Cordtz called me up before I got out of town and said that they had decided not to go any further with it. I don't remember whether I was down at the office or whether somebody delivered the message to me. I have told all that I can recollect about the conversation that took place there. I did not say to either of the Cordtz's at that time that I thought I would call them over to the office or to the hotel and see if they were interested in selling their plant to us. I did not say to either of them at that time, "We are going to clean up on all this independent competition on the coast and we thought you might be interested in selling out." I did not say anything of that substance or to that effect. I have no recollection of receiving any telegram while they were there. I did not recall that Mr. Cordtz said to me in substance or effect, "Well, you have received some good news, Mr. Lausen." I did not say at any time during that conference, "Oh, just another one of the outlaw independents came into the fold," or anything to that effect. Mr. Cordtz did not ask me who it was nor did either of them ask me.

(Testimony of August F. Lausen, Jr.)

I did not say, "Oh, a fellow by the name of McKenna up in Tacoma." Neither the younger nor elder Cordtz said to me, "Oh, yes, I know Mr. McKenna. He has the McKenna Company up there." I don't remember having acquired the McKenna Company at that time. I never heard of more than one McKenna in the outdoor advertising business in Tacoma. From this Exhibit 1-Z I see that we acquired McKenna on November 19, 1925. I have no recollection that it was acquired at any other time than the time shown there.

I have known C. E. Stevens for a number of years. My recollection is that I met him once in the summer of 1929 at the Sir Francis Drake Hotel in San Francisco. Mr. Kleiser, Mr. Foster and Mr. Roy McNeill were also present. I was in Mr. Kleiser's office one Saturday morning and he received a telephone message from Mr. Stevens and an apopintment was made. Prior to that time I had had a conversation with a young man by the name of Culliton from Seattle about a possible meeting between Mr. Kleiser and Mr. Stevens. Mr. Culliton telephoned to Mr. Stevens at Seattle from my office in San Francisco. At that conversation at the Sir Francis Drake Hotel there were probably some preliminaries but I don't remember them. The object of the interview was to talk over with Stevens the possible purchase of his plant in the Northwest and LaFon's plant down here in Los Angeles. There was a considerable talk regarding details but I don't remember at this time. He claimed that he had authority from Mr. LaFon to negotiate for the sale of the LaFon interests as well as his own. We asked him what he had and how much he wanted for it. He said, "You fellows know about as

much as I as to what I have so why ask me what I have got." We wanted to know what he wanted for it and he said he wanted $550,000 for the two interests. I expressed a thought that that price was very high for what I knew he had from what I had observed going around the cities, and told him I would like to know just how he based his value. I did not know what he had otherwise to dispose of. He said that he did not have any statement but that was his price and he stuck to it. I tried to get what we thought would be a reasonable figure and he said, "Well, of course, you know I am a pretty good nuisance around here and it is going to cost you some money to get rid of the nuisance." We talked a couple of hours around those lines and Mr. Kleiser had to leave. He excused himself and we stayed there about ten or fifteen minutes more and Mr. Foster said that we would think it over. Mr. Stevens said, "Well, don't think too long because I am thinking right now of boosting my price $50,000." We left and talked it over whenever we got back to Mr. Kleiser's office and decided the price was too high. He called up Mr. Stevens and told him so. That is all that I can remember of the conversation that took place. Nothing at all was said in the course of that conversation by anybody about wanting to control locations. Neither Mr. Kleiser or anybody at the conference said that Mr. Kleiser or Foster & Kleiser Company was going to control all the good locations on the Pacific Coast. If we had any such intentions, I don't think we would have told Mr. Stevens we were going to take them away from him or try to get them or anything of that sort. Nothing at all was said by anybody at that conference in substance or to the effect that Foster &

Kleiser had taken a large number of Steven's locations away from him and would continue that policy unless Stevens sold out. I don't remember that anything was said by anybody at that conference in substance or to the effect that Stevens should have known or should know by that time that Foster & Kleiser Company controlled the major portion of the national business on the Pacific Coast and that it would be pretty hard to compete with Foster & Kleiser Company in one town when Foster & Kleiser Company were operating in five hundred. I don't remember any such thing as that. As far as I recall, Mr. Kleiser did not say anything of that kind. Nothing was said by Mr. Foster or by anybody else at that conference to the effect that Foster & Kleiser Company did cut prices in order to take Stevens' business away from him.

At the conversation I had with Mr. King in March, 1920, in the office of Foster & Kleiser Company on Valencia Street, Mr. King said that he and his associate, Mr. Potter were not getting along.

The meeting with Mr. Stevens at the Sir Francis Drake Hotel in San Francisco was not negotiated by Foster & Kleiser Company or anyone connected with it. A young man, Mr. Culliton, called at my office in San Francisco one day and asked me if I would be willing to talk with Mr. Stevens of Seattle. I told him I would be very glad to talk to him at any time. He wanted to know whether I expected to be in Seattle in the near future and I told him I didn't think so. I asked him what was on his mind and he said that Mr. Stevens approached him some time ago and wanted him to get his mother-in-law to advance some money.

(Testimony of August F. Lausen, Jr.)

The last plant acquired by Foster & Kleiser was the LaFon plant in Los Angeles acquired in 1930. The purpose of the acquisition of it was that he had locations and a plant which we could use and merge with ours to good advantage. It was not the purpose to eliminate LaFon as a competitor but that was the result of it. We could use the LaFon locations and LaFon structures to very good advantage and did make use of them. I am a member of the board of directors of Foster & Kleiser Company and have been ever since it was organized. When Foster & Kleiser Company acquired these plants it was not its purpose to eliminate or prevent competition. The purpose was to build up our business and be able to deliver a service in a uniform manner throughout the Pacific Coast area. If we had not put ourselves in a position to deliver that service, there was no one else in the field at that time who showed any disposition to do it. If we had not put ourselves in a position to deliver that service and if the other plant owners continued to deliver the class of service they were delivering, we would be losing business on the Pacific Coast from the Pacific Coast accounts. We had received several threats from large customers that unless there was definite improvement they would have to use their money in other media. Foster & Kleiser Company has not forced any competitor to sell out. It has not threatened to build a competing plant with a competitor for the purpose of forcing him to sell out. The competitors' plants that we did acquire we did not acquire for the purpose or with the object of eliminating the competitor from the outdoor advertising field. In practically every case, if not every case, we were approached by these plant

owners with the idea in mind that we would take over their plants. When such an approach was made we looked over their properties, approached them and if we could get it at a reasonable figure we made a deal. If we were not interested or if we could not arrive at a reasonable figure, we did not make a deal. We had use for each plant that we acquired or some part of it at the time we acquired it. We made use of everything in that plant that they had that we could fit in with our classifications. The usual determining factor in most cases were the locations or leases which they might have had which we could use to good advantage because we were always in need of good locations in the heavily trafficked or traveled districts. Going back to 1921, 1922 and 1923, the plants that we acquired did not have written leases. They had structures of one kind or another erected upon locations. We made use of those locations and then set about immediately to get the location tied up on our regular lease form. In that period the demand for space in outdoor advertising was greater than Foster & Kleiser Company could then supply without acquiring these competitive plants. The orders were coming in faster than we could handle them with the space that we had at those times and we were confronted with the problem of getting enough locations to build our plant to a sufficient capacity to take care of the volume which was offered to us.

I first heard the term "undercover work" used in connection with the activities of the Los Angeles branch in connection with the purchase of the DeLuxe Advertising Company in 1924. I found out that Clyde Meyer was engaged in undercover work at Los Angeles in 1924. Neale

(Testimony of August F. Lausen, Jr.)

Brothers, who owned the DeLuxe Advertising Company, called on Foster & Kleiser Company in San Francisco. They met Mr. Foster and he asked me to step into his office and I took part in the conversation which ensued. The Neale Brothers were very much exercised at what they called our unfair methods in competition for locations with them. They said that they had entered the business with the idea that it was a very profitable business with few problems to contend with and that all they had to do was to get some locations, erect some signs, paint them and derive a profit therefrom. They found, however, that there were very many more problems connected with the business. They were heavily in debt, having borrowed money from their mother, and they were very much concerned about the outcome of the whole thing. They asked us during that interview whether we would be interested in taking over their plants. We told them it depended upon what they had and what they wanted for it. Mr. Foster said he expected to be in Los Angeles within the next week or so and would look into the matter. That was the first I ever heard of any alleged unfair practices against the DeLuxe or anybody else in Los Angeles under the leadership of Clyde Meyer. Mr. Foster subsequently came to Los Angeles and asked me to come down a day or two after he got here to try and arrange a deal, because they had some really good structures and some very fine locations. Mr. Kleiser was not here at that time, he was in the East. The Neale Brothers told us that they felt we were very unfair in our business methods in the way that we competed with them and that we were using underhanded methods. I don't remember that they went into

detail but they might have, but while we were there in Los Angeles I made it a point to take the matter up with our manager, Musaphia. He called in Mr. Young and they admitted that they had. They told me that Meyer was acting as a sort of undercover agent in representing himself to be a real estate man; that he had a real estate office and quite a number of things which were entirely contrary to our methods of doing business. I was very much surprised and told them that they were acting contrary in every way to the policies on which we always worked and that we did not want to indulge in anything that was not free and above-board, and that they should cease all of those things immediately and never let it happen again. As far as I know, it was stopped at that time. I think I inquired into the cost of those operations and my recollection is that they told me they had spent some $7,000.00 or $8,000.00.

The branches of Foster & Kleiser Company render a financial report showing the operations, income, expenses and net results to the general office every month and they did so during 1924. In addition to the report, the branch manager wrote letters at the end of the month. They did not acompany the main report but came in at the latter part of the month, summarizing his expenses, as shown by the branch manager's report, and commenting upon them. If there was anything out of line or extraordinary, he would mention that in the letter. The financial reports as distinguished from the letters came to my desk as general manager. This Los Angeles branch profit and loss and asset sheet 18-B, being plaintiff's Exhibit No. 27-F for identification, is the financial report, or a copy

(Testimony of August F. Lausen, Jr.)

of it, that was sent in by the branch manager of the Los Angeles branch during the years 1920 to 1933. The reports for the year 1924 are there. This is the form of the report that I get, although I don't get all these sheets. That is the only type of financial report that the general office got or gets from its branches. There is nothing in any of these reports to indicate that the Los Angeles branch was spending any money at all on the operations of Clyde Meyer that have been described here, or any expenditure of that sort. If the cost of the operations of Clyde Meyer had been charged against the lease department in any way, it would have appeared in these reports in some one or more of the lease department accounts such as space rental account, space department segregation, or unbuilt space. I have examined these reports from the Los Angeles office to the San Francisco general office made during 1924 under your direction. There is nothing in these reports to indicate any expenditure for the Clyde Meyer operations to the lease department. There is nothing in any of the reports which came to me to indicate that the operation was going on. The subdivision of the general expense account 363-A is an account for the purpose of taking care of all sundry expenditures that cannot be allocated directly to any particular account that is in our books. The total monthly expenses of the Los Angeles branch in that period charged to general expense were fifty odd thousand dollars, more or less. There was nothing in any of the reports that I ever saw that came to me for the months of 1924 which indicated that any expenditure was being made by the Los Angeles branch on this Clyde Meyer operation. I do not see all of those

reports, such as the detail sheets. I see the top sheet which shows the net results. That and the top sheets of all the other branches are taken by the general accountants and combined into a consolidated report of all business. Since this case was filed I have examined the sheets for the months of January to December, inclusive, in 1924 from the Los Angeles branch, similar to the sheet which I hold in my lap. There is nothing in those sheets indicating that any expenditure was being made on this work of Clyde Meyer. There is nothing in any of those sheets under the general expense account or any phase of it indicating that this expenditure was being made for the work of Clyde Meyer.

I subsequently heard of further depredations and unfair practices indulged in by the Los Angeles branch. Musaphia was manager and Mr. Young was assistant manager. They were the same men who had been manager and assistant manager before. I heard about the account first of the unauthorized work through a visit of Musaphia and Young to San Francisco. It was in the early fall or latter part of the summer of 1927. They came to apprise Mr. Kleiser of the fact that the LaFon System had threatened suit against the Foster & Kleiser Company. They were very much disturbed over that and wanted to know what to do. Upon questioning, we learned that they had without any authority or knowledge on our part again indulged in undercover work. Mr. Kleiser, in my presence, instructed them to return to Los Angeles immediately and cease everything that they had

(Testimony of August F. Lausen, Jr.)

been doing along those lines and to report to our counsel in Los Angeles, Gibson, Dunn & Crutcher, and to report back. They did call on Gibson, Dunn & Crutcher and made such report and reported back. Gibson, Dunn & Crutcher advised that we were certainly not conducting our business properly and were probably conducting it illegally. I instructed Mr. Haynes to go to Los Angeles and see to it that all of the facts were placed before Gibson, Dunn & Crutcher. When Musaphia and Young came to San Francisco and told me about the threat of LaFon to sue, that was the first time that I had heard of these operations against LaFon. A statement was made in the office of Gibson, Dunn & Crutcher by Musaphia and others concerned, including Clyde Meyers. I have read that statement. I have read plaintiff's Exhibit No. 20-G in evidence, or a copy of it. After that statement was made, I instructed our auditors, McLaren & Goode Company, to make a complete audit of cash transactions here in the Los Angeles branch over a period beginning with the fiscal year of that year and to render a report of their finding. That took quite a while but we finally did get the report. I submitted a report of the finding of McLaren & Goode Company to Mr. Kleiser. Mr. Kleiser and myself thereupon made an investigation into the affairs of the Los Angeles office after that report.

Mr. Clark then stated that defendants would now offer proof that Musaphia, Los Angeles Branch Manager of Foster and Kleiser, was a confessed embezzler.

THE COURT: You are proposing to show that your manager was an embezzler?

MR. CLARK: Yes, sir, a confessed embezzler.

(Testimony of August F. Lausen, Jr.)

THE COURT: And for that reason he became incensed against you—which is often the case—and for that reason you can not call him. Just for what?

MR. CLARK: The rule is, as we understand it, your Honor, that when we put a witness on the stand, we vouch for his credibility. That is one phase of the question. That is one reason why we want to show formally and by definite proof the character of man that this branch manager was. Now, the other rule is this: Inasmuch as he was branch manager and conducted these operations, which we claim were unauthorized and contrary to the policy of the company, if we do not produce him in corroboration of the tesimony which is now being given from the stand, the inference arises that he would be adverse to us, and we have a right under the authorities to offset that inference by showing the character of man the branch manager was.

THE COURT: Well, it is only an inference that you think yourself at liberty to combat. If you can show that the person is unfriendly to you—if that is the case—or that differences exist between you, why, that's that. But I do not see why you do not bring him on the stand, if he has already put it in writing.

MR. CLARK: He has. He has put it in writing.

THE COURT: Well, why don't you bring him up and let's have it—hear what he has to say. You can go no further than to show unfriendliness between you.

MR. CLARK: Well, we can't even show unfriendliness, your Honor; there has been no contact, as such.

THE COURT: All right; that settles it then. Proceed.

(Testimony of August F. Lausen, Jr.)

To which ruling and remarks of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 211.

The defendants further duly and regularly excepted to the question of the Court as to why the defendants did not call Mr. Musaphia, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 212.

With the approval of the Court, it was thereupon stipulated that any evidence offered by Mr. Clark on behalf of Foster & Kleiser Company should also be considered as offered by Restop Realty Company, and that any questions as to which objections should be sustained and an exception reserved by one defendant should be considered to be reserved by both and that any witnesses examined by Mr. Sterry on behalf of Restop Realty Company should be considered as examined by Mr. Clark on behalf of Foster & Kleiser Company.

THE COURT: What does the plaintiff think about this proposition?

MR. GLENSOR: May it please your Honor, I feel that there is no evidence here to show that anything of an unauthorized nature was done by their manager in Los Angeles. It has not been shown what his authority was. This witness has said that when he discovered these acts that had taken place against the De Luxe Advertising Company, he said to his manager, "It is contrary to our policy;" but there is no evidence to show whether it was within or without the scope of the manager's

authority. Now, they want apparently to prove the guilt or innocence of their Los Angeles manager on a collateral question, one on which we have no knowledge, and try him in his absence. We are not interested in the gentleman at all. If he had known anything that we wanted to know, we would have called him and put him on the stand and let him testify, no matter what his character was, and let the jury decide whether to believe him or not. We did not hire him as Foster & Kleiser's manager and we did not discharge him, and we know nothing about his alleged embezzlement. But I do not want to be drawn into the trial of a collateral matter here to try some man in his absence on a question of his guilt or innocence of a crime. Furthermore, if the said gentleman was a confessed embezzler, then handcuffed to him we must send out of this court room Foster & Kleiser, who compounded that felony, because it has appeared that they have never prosecuted him for his embezzlement. Now, if they want to show that this was outside of the scope of his authority, contrary to a written and declared policy of the company, why, there is a right and a wrong way to show it; and so far I think they have gone at it in the wrong way, by showing that somebody told him, "Why, it is contrary to our company's policy." Those are my views, if your Honor please.

The defendants and each of them then and there duly and regularly assigned the conduct of plaintiff's counsel in arguing the merits of Foster & Kleiser Company not prosecuting Mr. Musaphia, as misconduct and duly requested the Court to instruct the jury to disregard said argument. The Court refusing to do so, the defendants

(Testimony of August F. Lausen, Jr.)

then and there duly and regularly excepted to the failure of the Court to so instruct the jury and defendant Foster & Kleiser Company still excepts thereto and here designates as Exception No. 213.

Witness Continuing: Mr. Musaphia was not discharged. He resigned in July, 1928. I have not had any contact with him since. I do not know where he is. As far as I know, the general office has had no contact with Musaphia since that time.

From 1917 on down to the present time the policy of Foster & Kleiser Company with respect to leasing was to lease for our use all of the advantageous outdoor advertising sites that were available where the traffice was heavy and where the sites would be of value to an advertiser. That is the general policy of the company in the entire Pacific Coast area in communities in which the Foster & Kleiser Company does business. We do not lease locations for the purpose of preventing competitors from getting them. We had need at all times for all the locations which we leased or attempted to lease either at the time we leased them or some time thereafter. Our need for locations was quite great. During all the years from 1921 on up to the time of the depression we had need for pretty nearly every location that we could acquire. The tight district that has been referred to in this case was that close in area in which the traffic was heaviest. During the period from 1917 down to the time of the depression in the fall of 1929 Foster & Kleiser never had more locations than it needed in the tight districts in the Pacific Coast area, and during that period it never had as many locations as it needed. The policy of the com-

pany with respect to sales was to contact every possible user of our medium and endeavor to induce him to use it whether he was using it on the boards of some other outdoor advertising plant owner or not. We endeavored to sell our service. From 1917 down to the present time our policy with respect to leases and locations of competitors was really no different from the policy regarding any location. If there was a competitor on the location and that location became available through the expiration of a lease or lapse of a lease or for some other reason, we endeavored to secure that lease at the proper time. It was the policy of Foster & Kleiser Company from some time in 1922 onward to keep in contact with competitors' locations. Our policy was to keep in contact with all of the secured space that was available or might become available for outdoor advertising locations, and to have knowledge, if we could get such knowledge, of every site that might have advertising value. It was not the policy of the company to keep in touch with and to contact frequently competitors' locations and with the lessors of property to competitors for the purpose of making those lessors dissatisfied. The purpose of those contacts was to keep informed as to the condition surrounding those locations so that we might be in a position to bid on them at any time that might become open for a bid. I never heard of any instances of a branch taking leases from competitors before the termination of the lease rights of the competitors. It was not the policy of Foster & Kleiser Company from 1917 down to the present time at any time to take competitors' leases or locations, whether we wanted them or not. The policy was to get those locations if we

(Testimony of August F. Lausen, Jr.)

could get them at the right terms when such locations became available. We never leased any locations if we did not need them or never would need them. The policy of the company was to refrain from going into scenic spots for outdoor advertising structures. If there was a lake or mountain or particular boulevard of a particular scenic value, for example the Columbia River boulevard, we refrained from putting our advertising structures along those places. Foster & Kleiser Company has gone out and leased property of scenic character for the purpose of preventing its use for outdoor advertising purposes. For instance, for a considerable distance along the Skyline Boulevard running out of San Francisco and extending to the outskirts of the city and even beyond, we leased long stretches along the boulevard simply to control so that we would not put anything on it and nobody else could put anything on it. That was not done for the purpose of preventing progress by our competitors but it was done to protect our own business. If the Skyline Boulevard had been a mass of advertising structures immediately after it was opened for traffic, no matter how good or how bad those structures were, it would have caused resentment and we felt that outdoor advertising did not belong there. There were several other instances that that policy was followed out by the company. The Columbia River Highway is a very beautiful highway and the people of Portland took great pride in it. At that time we were not located there. Mr. Kleiser took an active part in that civic proceeding and Foster & Kleiser Company agreed not to lease any property or put any signs along the highway. A number of the property

owners along there did the same and agreed not to lease their property for advertising purposes. It was the policy of the company from 1917 to 1932 to tie up and carry as secured unbuilt property everything we could use. A reserve of unbuilt space was required in the conduct of the outdoor advertising business. I can't speak for any other company or any other operator but our experience has taught us we should have anywhere from twenty to twenty-five per cent available space so that if we lose a location, which we are constantly doing, we can move our structure from this location to another location so as to keep the display intact and carry out the contract. The loss of locations is due to various causes; probably the most frequent one is change of ownership. Foster & Kleiser Company has had experience in every place it operated with the change of ownership and its effect upon its locations. Property in Los Angeles at one time was moving very, very rapidly. There was a boom on here for several years and property was changing hands almost overnight. We would lease a piece of property today and would be informed a week or month after that there was a change of ownership and many times we had to move our structures almost immediately after their erection. This turnover in property in Los Angeles had a very marked effect upon the Foster & Kleiser Company building program. It was very hard to keep our footage from shrinking to say nothing of expanding. We started

(Testimony of August F. Lausen, Jr.)

to rebuild our plant in Los Angeles in 1918. That operation was confined to the immediate plant that we had taken over. After we had taken down about a third of it the capacity had shrunk and besides that the volume was then commencing to increase and it was increasing very rapidly for a number of years so that it was very difficult, first, to maintain our footage and, second, to increase it. The movement of our plant at one time reached practically five per cent a month or 100% movement in twenty months. We did not move every location but we moved the aggregate of the total of our plant every twenty months due to the loss of locations from the turnover of real estate. As Foster & Kleiser Company has conducted its business, it has attempted to maintain a reserve of about twenty to twenty-five per cent open built space all the time. That is space with advertising structures on it which has not been sold under contract. There are times that it might run as low as fifteen per cent unsold or maybe ten, but the normal open space runs between twenty and twenty-five per cent. We keep our plants built up to that capacity so as to be able to handle any order that might come to us unexpectedly or at any time. With respect to the policy of acquiring locations which could not be developed or used at all, the only locations that I know of of that character acquired by Foster & Kleiser are those that are leased so as to insure advertising value of the property adjoining.

(Testimony of August F. Lausen, Jr.)

Foster & Kleiser Company was the first in the outdoor advertising field in the poster business in the Pacific Coast area. I think the first competition that they had was at the time the Union Advertising Company began business here in Los Angeles. It has been the experience of Foster & Kleiser Company that when a competitor, either in the paint field or in the poster field, comes into business that we begin to lose locations. The company has attempted to protect itself against such losses. We try to have a proper lease but even with that sometimes we lose locations because of a change in ownership. Generally we try to tie up these locations in such a way that the other men can't molest them. When we lose our locations, due to a competitor coming into the field, we have to remove our structures.

Prior to the acquisition of the LaFon System by my company in 1921, there was considerable competition for sites in Los Angeles. LaFon tried very hard to get our locations and we were competing for unsecured locations. I have read bulletins Nos. 74 and 242 of Foster & Kleiser Company. I signed the original of Bulletin No. 242-A.

Said Bulletin No. 242-A was thereupon offered and received in evidence, read to the jury and was marked Defendants' Exhibit WWW in evidence. Said Defendants' Exhibit WWW is in words and figures as follows:

(Testimony of August F. Lausen, Jr.)

[Defendant's Exhibit No. WWW.]

OFFICE BULLETIN
NO. 242A

June 26, 1924.

FOSTER AND KLEISER COMPANY

Los Angeles
San Francisco
Seattle
Portland
Oakland
San Diego
Tacoma
Long Beach
Sacramento
Fresno
Medford

Re: LEASE DEPARTMENT CONTACT SCHEDULE

Gentlemen:

In handing you herewith Bulletin No. 242, dated today, over the signature of Mr. Haynes we wish to call your attention again to the fact that a very considerable por-

tion of our income is spent for rentals, salaries of the leasemen and unbuilt space.

We have gone over very carefully the leasing system with Mr. Haynes and we are hereby approving the ideas embodied in the bulletin attached, with the provision that the responsibility of properly protecting each territory rests entirely upon the branch manager. Generally speaking, however, the formula set forth in the attached bulletin can be made applicable to each branch in line with the curtailment of every possible expense.

The Lease Department is one which should be most carefully analyzed and studied by each branch manager for we feel that not alone can the rentals be materially reduced, but that it will not require as many outside men to give us all the protection that we need nor the amount of inside help to properly maintain the system at all time. We feel that much saving can be accomplished by the careful analysis of the Leasing Department and reassigning the work.

Each branch manager should be intimately acquainted with the details of the leasing department. In the larger branches where there are lease department managers the branch manager should confer with the lease department manager at least once a week and go over everything pertaining to the lease Department. The branch manager should look at the new leases as they come in so that he may be assured that he is getting the proper kind of

leases as to form and that his rentals are actually kept at a minimum. He should know beyond a doubt that his territory is properly covered. The branch manager alone is responsible to the General Office for the proper and economical conduct of the Lease Department as well as all other departments.

If there is sniping going on in your city every effort should be made to secure the locations on which the snipes are being pasted and either convert them into 24-sheet or three sheet posting locations or if they cannot be so used clean them up and stencil "Post no Bills." Nothing in a city or town looks worse than daubs and snipes.

Hoping this matter will receive the careful attention which its importance demands, and that from now on we shall see a substantial decrease in the space rentals and expenses connected with conducting the Lease Departments without in any way letting down on the protection which we need and must have at all times, we are

Very truly yours,

FOSTER AND KLEISER COMPANY

AFL*IM A. F. Lausen, Jr. General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. WWW Filed 1/15 1935. R. S. Zimmerman, Clerk By Cross Deputy Clerk

January 16, 1935.

Thereupon

ALBERT L. LEWIS

was called as a witness on behalf of the defendants, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am now the Pacific Coast representative of the Donaldson Lithographing Company of Newport, Kentucky, and have been for sixteen years. Before that I was employed by Foster & Kleiser Company at Los Angeles in the selling end of the business. The Donaldson Lithographing Company have not manufactured what is termed the stock poster for twenty years or more. At one time the Donaldson Lithographing Company as well as other lithographers manufactured stock posters. A stock poster is a poster that was sold outright to an advertiser without any consideration of space entering into the thing and he controlled it completely. A stock poster was designed with a special design on it for a shoe merchant for example, and he could have his name printed on it afterwards and use the poster to advertise his business. Since I have been Pacific Coast representative of the Donaldson Lithographing Company it has been engaged in selling what we call service posters, which is a complete service consisting of both posters and space. Each year for various lines of business they develop a series of designs carrying an advertiser through a twelve-months' cam-

paign. This was sold to an advertiser along with the space for the boards themselves and a contract made to carry along for a period of time. The Donaldson Lithographing Company actually sold the space on outdoor advertising boards upon which these posters were to be posted. The advertiser paid for the poster. There were some cases where the space might have been purchased or the poster might have been purchased for the advertiser's account, but the advertiser paid for it eventually. Posters might have been bought for an advertiser's account by a poster plant but the poster plant in reality did not purchase the poster. They bought it for the advertiser. The Donaldson Lithographing Company has never sold its posters to an outdoor advertising plant directly. They have sold them indirectly in the way I have just described, that is, the plant might buy the poster for the account of the advertiser. Donaldson has followed that policy as a matter of convenience more than anything else so that one bill could be rendered to the advertiser for the entire account. Donaldson does not sell more than one service poster or one series of designs to more than one merchant in a community and has never done so during the time I have been connected with the company. Donaldson supplies its posters to advertisers when they are bought by a plant owner for the advertiser's account. It has done so all over the United States and on the Pacific Coast. There was an instance in the Northwest of a so-called independent plant owner selling a Donaldson poster which we called a cooperative poster. A cooperative poster is one sold by the Donaldson Company to a manufacturer and a contract is made with the

manufacturer whereby Donaldson would go out and sell to the manufacturer's dealers. For example, the Donaldson Company would sell posters to Kuppenheimer, the clothing merchant, and then Donaldson would agree with Kuppenheimer to go out and call on the Kuppenheimer dealers and induce them to buy the space upon which to post that poster.

THE COURT: If it is important for the court to understand that, you had better elaborate it; I would take a specific case and start in at the beginning. I don't understand.

The witness continuing: Kuppenheimer is a manufacturer of men's clothes. He wholesales them to retailers for resale. The Donaldson Lithographing Company would make a poster of any design that Donaldson agreed upon with the Kuppenheimer people and sell that poster in large quantities to the Kuppenheimer people outright. We attempted to retain the control of the posters inasmuch as we were interested at all times in getting a commission on the space. As part of Donaldson's agreement with the Kuppenheimer people, Donaldson then attempted to sell or induce the local distributor in Oakland, California, to buy from a outdoor advertising company the space on the boards upon which to display the posters that Kuppenheimer had bought from Donaldson. The idea would be that the local dealer in Oakland would pay for the space on the plant in Oakland and Kuppenheimer would pay for the poster that had been purchased from Donaldson. That is a cooperative account. When Donaldson had induced the local dealer to buy space on some outdoor advertising plant, we would not supply the posters unless Donaldson

(Testimony of Albert L. Lewis)

got compensation for the space. That compensation was 16-2/3% and was paid by the poster plant upon which the paper was displayed. The cooperative poster was sold by Donaldson in such a way as to derive a commission for Donaldson on the advertising space on the poster plant on which the poster was displayed. The plant owner paid that. In some cases we sold posters direct to an advertiser where we had absolutely nothing to do with the space in any way at all, as in a large quantity. The Donaldson Company was in the lithographing business and would bid for business here in Los Angeles against any other lithographer and sell the posters to anybody who was able to buy them if it got the bid, and would make posters for anybody able to pay for them. Those were not service posters and they were not the cooperative posters. During the time that I have been the Pacific Coast representative of Donaldson there has never been an agreement of any kind, express or implied, that Donaldson would use only the boards of Foster & Kleiser Company for the displaying of the posters sold by it, whether they were cooperative posters or the special poster or the poster service. There was never any such agreement. As a matter of fact, Donaldson actually used the boards of independent plants for the display of these posters on the Pacific Coast. We have used independent plants on several Florsheim contracts up in Seattle and in Santa Ana. The plant used at Santa Ana was Young & Elliott. They had some boards in Long Beach and we posted some there. We collected a commission from Young & Elliott for them. In the Northwest we displayed paper on the plant of the C. E. Stevens Company. That company

did not pay Donaldson a commission on every occasion. There were several accounts at one time where we did not have control of the paper where it would be sent out to an advertiser direct. If we had no control of the paper we could not control these commissions, but wherever we had control of the paper Stevens paid us a commission. When I say "control of the paper" I mean that when we made a contract with a large advertiser, like Kuppenheimer or Florsheim, our revenue came from the sale of space rather than the sale of posters. Posters were just incidental and in making a contract with a large advertiser we attempted to contract with him so that we had control of the paper, that is the lithographs, in such a way that we sent the posters to the plant owners ourselves. In most cases the commission that the Donaldson Company requires to be paid upon the space that is used for the display of the Donaldson poster service is 16-2/3% of the rates charged by the plant owners for displaying the paper. Donaldson had a letter from the Special Site Sign Company at one time, asking for what they called some stock posters which we did not have. They never asked for our service posters. That might have been what they thought they were getting but they called them stock posters and we did not sell stock posters. I know the plant of the Special Site Sign Company quite well. Donaldson sells those service posters in conjunction with the salesmen of the Foster & Kleiser Company. We would sell them in conjunction with the salesmen of any other outdoor advertising plant if they paid us a commission on the space. There is no agreement at all and never has been since I have been with the Donaldson

(Testimony of Albert L. Lewis)

Company to the effect that all the service poster business or any part of the service poster business obtained by Donaldson on the Pacific Coast or any part of the Pacific Coast would be placed on Foster & Kleiser Company plants.

CROSS-EXAMINATION

BY MR. GLENSOR:

I have been in the outdoor advertising business twenty-two years, counting the time I have been with Donaldson. During the sixteen years that I have been with Donaldson I have kept pretty familiar with the policy and business methods of that company. I go back to the home office from time to time and consult with Mr. R. D. Carrel, the sales manager. There were two Mr. Donaldsons with the company and there is only one now.

Q. Now, you testified a few moments ago that your company would sell its posters to any plant owner and that it was done all over the United States?

MR. CLARK: I object to that on the ground that that is not the testimony and assumes something not in the record.

THE COURT: Objection overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 214.

A. No.

Q. BY MR. GLENSOR: Then you did not so testify; didn't you testify a few moments ago that your company would sell your service for display on the boards

of any plant owner, whether an independent or an Association plant?

A. Yes, but we sold direct to the advertiser, not to the poster plant.

Q. Didn't you testify within the last five minutes or ten minutes that your company—

MR. CLARK: I object. The witness answered the question "Yes", and went on and explained it.

THE COURT: Overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 215.

The Witness continuing:

I testified within the last ten minutes that my company would sell its service for display on the boards of any plant owner, whether Association or independent. That is the situation right now and always has been. It has been selling this service for about twenty years. Prior to that it sold stock posters. That was not its policy prior to the time that it sold its service as distinguished from stock posters. Prior to that time we sold posters only and had nothing to do with space. We would sell on any plant. I know what the Poster Advertising Association is and that it holds meetings and conventions from time to time and has for years, and that they have exercised and played a prominent part in the development and progress of the outdoor advertising industry. I attended a convention once in Cincinnati. I could not recall the year.

(Testimony of Albert L. Lewis)

Q. Don't you know and weren't you ever informed when you were instructed with respect to the policy of your company that the Poster Advertising Association at its convention at French Lick Springs, Indiana, way back in 1910, had passed a resolution to the effect that it was the sense of the board of directors that poster printers who are in the habit of sending out sample posters do not benefit this organization by sending their sample posters to the opposition bill posters, "opposition," meaning independents?

MR. CLARK: I object to that question on the ground that it is wholly improper and that the witness could not have received any instructions relating to the year 1910 when he did not begin to work for the Donaldson Company until 1916 or 1917, and on the further ground that the question is compound.

THE COURT: Overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and still except thereto and here designate as Exception No. 216.

A. I know nothing whatever about anything of that kind.

The Witness continuing:

I was never told that at that time and place Mr. Donaldson spoke on the motion and said substantially: "We have always refrained from sending samples of our posters to the opposition plants unless they were asked for, and on many occasions when they were asked, why, we have refused because I did not know why they should have them. I can say for our company that we will not send

samples to any of the opposition people; in fact, I do not know how they got into the hands of the National, the National being an independent Eastern plant that was operating at that time and causing some concern to the Poster Advertising Association or the Associated Bill Posters, as it was known then." I do not know that. I was never told that my company had made any change in its policy during its existence with respect to whether they would allow their paper to be posted on independent plants or solely on Association plants. All I know is the policy of the company since I have been with them. I could not answer the question as to how much paper was placed on independent plants prior to the G. O. A. decree of 1929 on account of the date. I know there has been thousands of dollars worth of our paper placed on opposition plants throughout the United States. I can't answer since what time that was but there has been plenty of it since the date of the decree, May 7, 1929, and plenty before that.

My territory covers the whole Pacific Coast.

Prior to that decree very little business was placed on independent plants in my territory because they didn't have any plants. I think that this Stevens incident of which I spoke probably was prior to 1929. That was one instance where we sold the advertiser but did not sell the service and we did not get control of the paper but Stevens paid us a commission on this space. The letter from the Special Site Sign Company to the Donaldson Company, defendants' Exhibit UUU, in which Mr. Carrel stated that I would call on Mr. King for investigation in reference to his service in Oakland was referred to me. I did not call on Mr. King. I knew that the

(Testimony of Albert L. Lewis)

Ashby Furniture Company, for whom that request was made, had been a patron of our service. I sold them. The paper had been previously displayed on the plant of Foster & Kleiser. Just prior to this letter, I had solicited and received two contracts from the Ashby Furniture Company for our service. These two contracts in evidence are those contracts. The contracts were filled. They were for poster service. This notation on the bottom of this contract under the heading of "Remarks" is in my handwriting. I wrote that notation: "Above is for posters only. Does not include space. Ship posters to Oakland." The word "above" in the foregoing notation refers to the money figures. When the posters were shipped to Oakland, they were shipped to Foster & Kleiser and they posted them.

I make my headquarters in Los Angeles. I do not make my office with Foster & Kleiser Company. I have no office. As far as I know my company did not send samples or any information to the Special Site Sign Company in response to their request for information with respect to this proposed order for the Ashby Furniture Company. They wrote to me in regard to it. The Special Site Sign Company wanted to buy some stock posters and we did not have any. From 1924 on there was a period when we operated in connection with the Foster & Kleiser Company upon the basis that we were to receive 10% monthly on the space used for service posters, irrespective of whether we closed the order or not. During that period we got 16-2/3 per cent whenever we handled

the credit risk; that is, when we took the billing and paid Foster & Kleiser and took our chance at collecting. That arrangement continued practically all the time that I had been the Donaldson representative out here. It is in effect today.

REDIRECT EXAMINATION

BY MR. CLARK:

I didn't call on the Special Site Sign Company because in selling an account we had to be absolutely certain that we were going to place our paper where we knew that at the end of the contract we were going to be able to get a renewal order, and in my opinion the service that the Special Site Sign Company was rendering in Oakland was not the kind of service that we wanted to use. I had been acquainted with the Special Site Sign Company prior to that. I had been in the habit of going to Oakland four or five times a year all the time I was with Donaldson.

RECROSS-EXAMINATION

BY MR. GLENSOR:

In my opinion the kind of service that I would get would not justify a renewal order. I didn't understand that the Special Site Sign Company was losing its sites with fair regularity and was being moved off the locations from time to time. I knew nothing about that. I suppose that if a bill poster is being moved off of his sites all the time that it affects his relations with his customers. I

(Testimony of Albert L. Lewis)

didn't know that Foster & Kleiser had kept a card index on every site of the Special Site Sign Company and was contacting it at regular intervals during the lease. I knew nothing of Foster & Kleiser Company's business.

BY THE COURT:

The Donaldson Company are both manufacturers and posters and sellers of poster space. We are really an agency. We make the papers. It is our paper. The part of their business from which they derive their greater revenue is this commission we secured on space from the various advertisers. We were regularly paid for the manufacture of posters. The policy of the Donaldson Company as I have described it has not changed during the period of my connection with the company.

REDIRECT EXAMINATION

BY MR. CLARK:

We are practically in the same position as an advertising agency, except that we manufacture posters along with the selling of the space. The Donaldson Lithographing Company manufactures the posters and sells them on restricted terms and in addition to that buys the space upon which to display them. We sell the space to the advertiser and in turn buy the space from a poster plant to display it and receive a commission. The advertising agency does substantially the same thing except that it does not manufacture the posters.

(Testimony of August F. Lausen)

Thereupon

AUGUST F. LAUSEN,

recalled as a witness on behalf of defendants, testified as follows:

DIRECT EXAMINATION RESUMED BY MR. CLARK

A standard set showing is comprised of a certain number of panels so distributed throughout the plant as to give a complete coverage of the city in which that plant is located. The plant is divided into several standard set showings according to the capacity of the plant. There is no difference in the advertising value between standard set showings in the same plant. They are both equal in value. If the Union Oil Company should select a standard set showing in Los Angeles on the first of January and post its paper, and then the Standard Oil Company of California should select a standard set showing on the first of February and post its paper, the two oil companies would have the same value from an advertising standpoint on that plant. Foster & Kleiser Company began to use standard set showings probably twenty years ago when that method of selling poster advertising was adopted by the asssociation of which those plant owners were members. The standard set showing does not permit of the selection by an advertiser of individual panels. Your standard set showing is divided into parts which are commonly called a full showing, a half showing and a quarter showing. An advertiser should have the right to select one half showing out of any number of half showings that we might have open for sale at that particular time.

(Testimony of August F. Lausen)

Foster & Kleiser Office Bulletin No. 130, dated September 4, 1923, was thereupon received in evidence and marked defendants' Exhibit XXX in evidence, and is in words and figures as follows, to-wit:

[Defendant's Exhibit No. XXX.]

[Crest]

Foster and Kleiser

COMPANY

OFFICE BULLETIN

130

San Francisco, Cal.,
SEPTEMBER 4 1923.

Foster and Kleiser Company,
San Francisco,
Los Angeles,
Seattle,
Portland,
Oakland,
Tacoma,
Sacramento,
Long Beach,
Medford,

(Testimony of August F. Lausen)

Wm. G. Fahy Co., Fresno.

Gentlemen: Subject: ADHERENCE TO STANDARD SET SHOWING PLAN.

In going over a number of cooperative reports Number 1 and Number 2 which were the result of checking various poster displays with advertiser's representatives we note in many cases, especially in small towns where one or two posters constitute the showing, complaints on the part of the advertiser's representatives with regard to a particular location and often times a request to change the location to meet the representative's personal opinion.

We further note that in many cases our Cooperative Sales Report shows that our representatives have made promises that these changes of location will be made on the next month's posting.

We would caution you that if you have up to this time authorized any of your cooperative salesmen or any one checking displays with the advertiser or his representative to agree to make such changes the promises made should be faithfully performed. However, in the future instead of agreeing to change a location we should explain the theory and practice of the standard set showing to the adviser's representative to the end that he understands and accepts the showing as laid out and thereby eliminates the necessity of changing any location. OUR LOCA-

(Testimony of August F. Lausen)

TIONS MUST FIRST BE RIGHT — WE MUST THEN ADHERE STRICTLY TO OUR STANDARD SET SHOWING PLAN. We do not believe any of the Coast wide displays warrant any change of locations in the small towns under our method of operation. It may be well for you to give this information to all your co-operative salesmen who check with the advertiser's representatives from time to time so that they may be fully familiar with our method of operation.

We are quoting here a standard set showing plan as set forth in our "Poster Advertising on the Pacific Coast" page nineteen:

"The plants of Foster and Kleiser Company are laid out in a given number of set showings, each set showing being as good as any other. Great care is exercised to see that all showings are equally balanced as to the number of head-on as well as down-town locations, and, in fact, every precaution is taken to make and keep all showings exactly equal in advertising value. These set showings comprise a given number of full showings.

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

#2:

"Full showings in larger cities are divided into three-quarter, half, and quarter showings which gives the advertiser the opportunity of covering any city in varying degrees of intensity. A half showing, for instance, differs from a full showing in having half the number of panels, and yet the same distribution that serves to cover the whole city is obtainable. A quarter showing bears the same comparison to a half showing".

While this applies generally to large cities it also practically applies to all small towns especially where the advertiser is using a Coast wide display or covering a complete district or large portion of a district out of any branch.

Inasmuch as all our showings in small towns and large cities are laid out on the standard set showing plan and

(Testimony of August F. Lausen)

for the reason that all our panels are carefully located and carefully placed — 98% of them being within the corporate limits of each city and town and only 2% on the highway, 93% of them on primary streets, only 7% of the whole being on secondary streets — there should be no requests at all for changes in locations. Naturally there are going to be some panels in small towns better than others but by taking our service on the Coast as a whole each advertiser has an even break with each other advertiser, and while in some towns in some instances each individual panel may not be as well located as in another yet on the whole they are evenly balanced and each advertiser has a very complete coverage.

We further note especially with the Union Oil reports that a great many of their requests are for change of locations from the present ones to highway showings. It should be remembered that a rule of the Poster Advertising Association and the policy of our company is to eliminate as far as possible posters showing strictly to the highway as it is our purpose and endeavor to have our poster panels located within the corporate limits of cities and towns or in the congested areas close to those corporate limits.

We have also had complaints which state that the advertiser's representatives are not able to find poster locations in checking without one of our representatives. This is possible on account of the enormous amount of take

downs and removals which we have on the Pacific Coast owing to the great activity in building which makes it impossible for us at all times to get the information after the change of location on account of take downs and removals to the advertiser between the time that the poster is moved and the time the advertiser's representative makes his check. It should be remembered that in the City of Los Angeles alone our take downs and removals on account of building operations run frequently in excess of 6000 feet per month. Last month we moved over 7,000 feet of structures. This is fifteen miles of advertising structures end to end to be moved each year in that city alone. On the Coast as a whole the activity is not so great as it is in Los Angeles. While this is abnormal as compared to the balance of the country it is safe to say that we move an average of 15,000 feet per month on the whole Coast or a total of over thirty miles of advertising structures end to end during the year.

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

#3.

When a complaint comes to you from an advertiser checking his display without one of your representatives to the effect that he could not find the display as listed the

(Testimony of August F. Lausen)

foregoing paragraph is a reasonable explanation and should be readily understood by the advertiser.

It is the policy of our company to furnish one of our representatives to check displays with the advertiser and we should encourage the advertiser to avail himself of this service. Our representative should be thoroughly instructed with reference to promising any changes of locations and it would be well for you to instruct all those in your branch who at any time do any checking with advertisers or their representatives as to the method of our operations in order that they may better explain our purposes and the standard set showing plan to the end that all necessity for a promise of change of location may be eliminated.

We should exercise greater care and effort to continue to merit the confidence and business of the advertiser already on our books than we would put forth to interest a new user in the value of our services.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT*AP

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. XXX Filed 1/16 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing:

At my conversation with Mr. King at the Palace Hotel in March, 1920, I did not count off to Mr. King the competitive plants that Foster & Kleiser Company had put out of business. I did not count off on the fingers of my hand the competitive plants we had put out of business. I did not state to him that we had up to that time put five competitive plants out of business. I never put any plant out of business. We had not acquired five competitive plants by March 19, 1920. I have informed myself on that.

Foster & Kleiser Company has a sales office in New York. It was first established in 1925. We have had the same sales representative there ever since. We placed a representative in Chicago about 1927 or 1928. He is there now. I have spoken of the National Sales Department of Foster & Kleiser Company. The name was subsequently changed to the General Sales Department. It was changed simply as a matter of convenience and for no particular reason. This Foster & Kleiser office bulletin No. 145, which you show me, is my bulletin. I wrote it and signed it.

The bulletin referred to by the witness was thereupon received in evidence and marked defendants' Exhibit YYY in evidence, and is in words and figures as follows, to-wit:

(Testimony of August F. Lausen)

[Defendant's Exhibit No. YYY.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 145

San Francisco, Cal.,
October 31, 1923

FOSTER AND KLEISER COMPANY

San Francisco	Mr. Edwards
Los Angeles	Mr. Montgomery
Seattle	Mr. G. A. Sample
Tacoma	Mr. Everett
Portland	Mr. Haynes
Long Beach	Mr. Zamloch
Sacramento	Mr. Olmsted
Oakland	Miss Salin
Medford	

Wm. G. Fahy Co. Fresno

Gentlemen:—

Subject: CHANGE OF TITLE OF NATIONAL SALES DEPARTMENT

Beginning November 1, 1923 our National Sales Department will be discontinued and the work which has been done by that Department will be conducted by the General Sales Department, of which Mr. Montgomery

will be the head. The General Books will handle all the accounting of the General Sales Department.

Yous very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr

A. F. Lausen, Jr.

General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. YYY Filed 1/16 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing:

The general books referred to in that bulletin are the books from the General Office as distinguished from the books of any branch. The functions of the General Sales Department under its new name did not differ from the functions of the National Sales Department.

The Poster Advertising Company had a representative on the Pacific Coast. I don't remember exactly when they established their office but it is quite a number of years back. They maintained it up to the time of the organization of the General Outdoor Advertising Company in 1925. The General Outdoor Advertising Company continued that representative here on the Coast until

about 1929. The National Outdoor Advertising Bureau has a representative located in San Francisco. The representative of the Poster Advertising Company on the Pacific Coast was engaged in soliciting contracts to display advertising matter upon outdoor advertising plants. Foster & Kleiser were doing that also. If the Poster Advertising representative got a contract for the display of advertising matter on outdoor advertising plants in the Pacific Coast area, the Poster Advertising Company got the commission. If Foster & Kleiser Company had obtained and closed a contract for displaying the outdoor advertising matter we would not have paid a commission to the Poster Advertising Company. During the time the General Outdoor Advertising Company had a representative on the Coast, if they created outdoor advertising business and it was displayed on the plant of Foster & Kleiser Company, the commission was paid to the General Outdoor Advertising Company. If Foster & Kleiser Company got the business and posted it on its plant, it did not pay a commission to the General Outdoor Advertising Company. When an agency which is a member of the National Outdoor Advertising Bureau gets an account on the Pacific Coast and that contract is put through the Bureau for execution on Foster & Kleiser Company's plant, we pay a commission to the Bureau. If Foster & Kleiser get the business direct, they would not pay a commission to the Bureau. If the Bureau sends us a contract, we pay the Bureau a commission of 16-2/3 per cent. If Foster & Kleiser Company had obtained the business itself, without the intervention of an agency or the Bureau, we would not have paid a commission at that time. The

ultimate result is that Foster & Kleiser Company has been in competition in selling with the Poster Advertising Company, with the General Outdoor Advertising Company and with the General Agency successively up to a period which, I think, was in 1931. That is the time when Outdoor Advertising, Incorporated was organized. Outdoor Advertising Company, Inc. is a company which does nothting but sell the outdoor advertising medium. It does not sell for any particular plant. It is a national representative of a medium which is organized for profit and to create business for those who are engaged in the outdoor advertising business throughout the United States. The General Outdoor Advertising Company has not maintained a sales representative on the Pacific Coast since 1929. There has gradually grown in the outdoor advertising industry a full recognition of the General Outdoor Agency.

In my experience in the outdoor advertising business I have found that sniping is most objectionable in the downtown or thickly populated portions of the city where the traffic is heaviest; that is the district which we at one time called our "tight"' district. From my experience in the outdoor advertising business I can say that sniping locations frequently develop into structures called "bill-posting" structures. You might call them poster panels if they are built in panel size, but the ordinary structure that a bill poster put up was not of a standard length and was not even of a standard height, and he would post papers and posters of various sizes on it. In other words, the panels were frequently used on these locations for the purpose of posting snipes.

(Testimony of August F. Lausen)

CROSS EXAMINATION

BY MR. GLENSOR.

We did the largest portion of the outdoor advertising business on the Pacific Coast.

Q Yes. You never monopolized it, did you?

MR. CLARK: Object to that on the ground that that calls for a conclusion of law.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 217.

A I would say I don't believe we monopolized it, no, sir. We never tried to monopolize it.

Witness continuing: We never used any unfair methods and never desired to use any unfair methods in our operations as between us and our competitors. It was our object at all times in operating against our competitors to be perfectly fair.

Q BY MR. GLENSOR: Now, you gave considerable testimony yesterday about these associations. I want to ask you a few questions about those trade asssociations; and I suppose we do not need to lengthen this examination by continuously distinguishing between them. We will just call them "Associations", but if we strike a point where there is any distinction, why you just call my attention to it, will you? There was a paint association and a poster association. You are quite familiar with the poster association, aren't you?

A Yes, sir.

(Testimony of August F. Lausen)

Witness continuing: The Associated Billposters at one time was an association of men engaged in the billposting business. The General Outdoor Advertising Company was the largest owner of memberships having over one thousand. There came a time when my company was the second largest owner of memberships in that association, having about five hundred ninety memberships. We did not own any plants on the Pacific Coast that were not franchised plants. We regarded those memberships and franchises as being a valuable adjunct to our business.

The association that I first knew was the Asssociated Billposters and Distributors of the United States and Canada. I think that was the name that was given to it when they first formed an association. That name was changed on November 11, 1912 to the Poster Advertising Association Incorporated. That asssociation continued, according to my recollection, until 1925, when it, with the Otdoor Advertising Association, was merged and made into one association called the Outdoor Advertising Association of America, which is its present name.

These associations closed no contracts. I distinguish between closing contracts and developing business in that the association was not engaged in the development of any particular account or in any advertising campaign. Its function was to improve the media and to endeavor to create an interest by gathering together all the information regarding the plant belonging to its members and compiling data in the market arears in all matters of that kind and put it in such shape that it would be in convenient form to be used by the national solicitors who solicited advertising and by the advertisers themselves.

(Testimony of August F. Lausen)

Q BY MR. GLENSOR: There was a time, was there not, when the Poster Association, regardless of the name it had been called at that time, was limited to one membership or franchise in each city or community?

A I think there was and that that limitation was on from its beginning up to about 1916 or 1917.

Q Now, we will confine ourselves to a period prior to 1916 for the time being. Prior to 1916 they had a classified membership with different dues, did they not, for different classes of members according to the population?

MR. CLARK: We object to that question on the ground that it is irrelevant, immaterial; it being in the record now that the plaintiff in this case was not organized, did not come into existence until December 2nd, 1916.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 218.

It was thereupon stipulated that all testimony with respect to the Poster Association, regardless of the name it had been called at the time, prior to December 2, 1916, should be deemed to be subject to the same objection on behalf of the defendants and that an exception to the ruling admitting such testimony would be deemed to have been made by and reserved to the defendants and each of them.

(Testimony of August F. Lausen)

A Prior to 1916, if a member built a plant in another city where there was another association plant, he was subject to discipline and fine. Consequently there was never more than one association plant in a city. In 1916 there was a change and subsequent to that time there could be more than one association plant in one town.

Q. Why was the change made in 1916?

MR. CLARK: Now, that is objected to, if the Court please, as long as the change was made, on the ground it is wholly irrelevant and immaterial.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 219.

A There was handed down in 1916 a decree of the Federal Court, and I am inclined to believe that it was the result of that decree that the change in the rule was made. That is my impression.

That decree was handed down by Judge Kenesaw Mountain Landis of Chicago and was known as the Landis decree. It was handed down in 1916, under the Sherman Anti-Trust Law. I familiarized myself with it.

It was thereupon stipulated that neither Foster & Kleiser, Incorporated, Foster & Kleiser of California, Foster & Kleiser Company, nor any of the defendants in this case were defendants in the proceedings leading up to the Landis decree.

(Witness continuing:)

I presume that the Associated Bill Posters were permanently enjoined and restrained, among other things,

(Testimony of August F. Lausen)

from "agreeing together or with one another, expressly or impliedly, or from adopting any rule or regulation to the effect that any person, firm or corporation engaged in opposition to any member of said defendant Association or any of its subordinate associations in the business of posting posters transported in interstate or foreign commerce shall not be eligible to membership in said defendant Association." Subsequent to the handing down of that decree it was entirely possible for more than one franchised association plant to be in a town. I have no knowledge of any town on the Pacific Coast in which there was more than one franchised association plant. We had memberships in the association for as many towns as those in which we operated. I think that was close to 600 at one time. There was never more than one in any of our towns. I have no knowledge of anything outside of the Pacific Coast; therefore, I cannot say whether there was any town in the United States in which there was more than one franchised plant in the association subsequent to the Landis decree.

The plant owners were not really developers of the business. They sublet or sent to other plants very little business in proportion to the total amount of business that was executed by the plant owners. The statement in the letter of February 2nd, 1920, addressed to G .E. Miller & Company, plaintiff's Exhibit 3-A in evidence, to the effect that the company did over 90% of the outdoor advertising business in its territory and controlled more than 90% of the valuable advertising locations, besides exclusive connections for the interchange of business throughout the United States and Canada with more than

5,000 other advertising concerns, meant that we were located on the Pacific Coast and having practically 90% of the facilities there, that through our membership with the association gave us that outlet for whatever business was created from those sources. I said that the business which came from those other advertising concerns was negligible. That was the business that was actually sent out over plant owners' names.

This letter dated November 1st, 1922, signed by Mr. Kleiser offering more stock also refers to the fact that the company controlled, through leaseholds, more than 90% of the available advertising locations, and also enjoyed exclusive connections for the interchange of business throughout the United States and Canada with more than 5,000 other advertising concerns. That exclusive connection relates to the same situation as to which I testified with respect to the other exhibit. The business that we obtained from plant owners themselves, as plant owners, to us as plant owners was negligible. The business that those plant owners closed, if they did close any, came to us through the solicitors. Our selling connection with these 5,000 plant owners was through memberships in the association. The other plant owners were not obligated to send us their business and we were not obligated to send them ours after 1916. That was after the Landis decree. At that time the constitution and by-laws of the association were rewritten and the ruling were all changed. I personally am not certain as to whether there was any obligation before that. I am certain that after the Landis decree there was no obligation to hand business from plant owner to plant owner

(Testimony of August F. Lausen)

within the asssociation. This letter of September 15, 1923, plaintiff's Exhibit 3-C in evidence, over the signature of Foster & Kleiser, states that in the 507 cities and towns in which the company operates, we hold the franchise of the Poster Advertising Association and the Outdoor Advertising Association, through which we obtain all the national business created as a result of these organizations to be placed in our field. We got all this national business from the National solicitors and also the General agencies that were creating national outdoor advertising business. Probably the majority of that business came through the National Outdoor Advertising Bureau. By 1923 the Bureau was sending out a very large amount of business.

Q But Mr. Kleiser in his letter here says, "We hold the franchise of the Poster Advertising Association and the Outdoor Advertising Association through which we obtain all of the national business created as the result of those organizations to be placed in our field." Now, is it still your testimony that those franchises did not bring you any business except through national solicitors?

MR. CLARK: We object to that on the ground that that is not the testimony. The witness did not so testify.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which the defendant Foster & Kleiser Company still excepts and here designates as Exception No. 220.

A The fact that we held the franchise or the membership in these various towns brought us the business

(Testimony of August F. Lausen)

which was created by these solicitors and by these agencies; and further, for the fact that we were the only concern that was at that time, if I remember correctly, engaged in the poster advertising business at any place on the Pacific Coast.

Foster & Kleiser had one of the national solicitorships. We obtained it when we began business in San Francisco back in 1915. The national solicitorships were created by the Associated Bill Posters back in the early days. At one time there were quite a number of solicitors. I do not know whether there were 42 or not.

Q There were 42, I think, in 1911. And do you remember—has it ever been reported to you that there was a movement or an action taken, I think at the Asbury Park National Convention of Associated Bill Posters in 1911, reducing those national solicitorships to 12?

MR. CLARK: This again, if the court please, is irrelevant and immaterial. The plaintiff wasn't even in existence at that time. Neither was the defendant, in 1911, did not come into existence until 1915.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 221.

A I know there was an action taken. Probably that date is correct, I don't know, whereby a change was made in the number of solicitorships which were sponsored by the Association. I don't know whether the numbers that you stated there are correct or not, from 42 to 12.

(Testimony of August F. Lausen)

Witness continuing:

During this period prior to 1916, Foster & Kleiser, Inc. was a member of the association and Foster & Kleiser of California was also a member. The present company is now a member.

Q. And with your large interests in this Association, you doubtless know that the action of the Association in reducing these national solicitorships in 1911 resulted in litigation and in a judgment in the case of Ramsay v. Associated Bill Posters and Rankin, to the extent of $247,000 or thereabouts, in 1929, don't you?

MR. CLARK: I object to that on the ground that it is irrelevant and immaterial; and I assume, of course, that counsel is going to prove that that judgment was recovered against Foster & Kleiser Company, otherwise I do not think I have ever heard, if I may characterize that situation, a more highly improper question put to a witness. Now, I challenge counsel to state to the court that he is going to prove that Foster & Kleiser Company was even a party to that litigation.

MR. GLENSOR: Why, of course, they were not a party.

THE COURT: Objection sustained.

MR. STERRY: I desire to assign the asking of the question, your Honor, as misconduct on the part of plaintiff's counsel.

MR. CLARK: I want to join in that.

Witness continuing: These national solicitors paid $1,000 a year license fee to the association, during a certain period. I do not recall how long that was. I do

not think it was very long. These national solicitors terminated by reason of the Landis decree. A year or two afterwards the Bureau was formed. It was an organization of advertising agencies which became members. Not all the agencies were members of the Bureau, but the Bureau was composed of agencies and the agencies when they got contracts for outdoor advertising placed them with the Bureau. Prior to 1925, the Bureau placed them with the Thomas Cusack Company. The Thomas Cusack Company displayed such advertising on its plants as the contract called for and sent the rest to other plants. I don't know whether these others were all association plants or not. They sent all the business that came to the Pacific Coast to us. I don't know of any business being sent to a non-association plant on the Pacific Coast if there was an association plant available. At the time the General Outdoor Advertising Company was formed, there was some discussion with respect to Foster & Kleiser becoming a part of that consolidation and an audit was made of Foster & Kleiser Company. However, we did not go into it. Foster & Kleiser Investment Company invested money in the General Outdoor Advertising Company and the Foster & Kleiser Investment Company is owned 50/50 by Mr. Foster and Mr. Kleiser. They put a million dollars into the G. O. A., and Mr. Kleiser was elected a director.

This contract that had existed between the Cusack Company and the Bureau was inherited by the G. O. A. I am not familiar with the details of the contract.

The contract between the G. O. A. and the National Outdoor Advertising Bureau was thereupon marked Plaintiff's Exhibit 221 for Identification.

(Testimony of August F. Lausen)

Witness continuing:

It is not true that after that setup of the G. O. A. and the National Outdoor Advertising Bureau, and after Mr. Kleiser became a director in the G. O. A., and after he and Mr. Foster invested a million dollars in it, that all of the national business which our company received came to us through the G. O. A. We got national outdoor advertising business from five or six other sources. We got business from the Charles Wrigley Company, the Outdoor Service, Inc., Sellers Company, Outdoor Advertising Associates and quite a lot more. I could name more if I could think of them. It is a fact that all the business from the National Outdoor Advertising Bureau was cleared or came to us through the General Outdoor Advertising Company. That was one of the principal sources of our national business, but we did not get all of our national business through there.

Q. Now, do you understand, do you know, whether or not under this arrangement the General Outdoor Advertising Company and Foster & Kleiser Company, and the Bureau, through this arrangement which we have just described here, did not control upwards of 80 per cent of the national outdoor advertising business in the United States?

MR. CLARK: Objected to as immaterial and irrelevant, unless counsel shows, which he has not done, in his main case, that that was done by reason of a combination or agreement of some kind among the three of them.

THE COURT: Overruled.

(Testimony of August F. Lausen)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 222.

A. The Foster & Kleiser Company had nothing to do with anything, any contract—between the G. O. A. and the Bureau.

Q. Is it not a fact that under this arrangement the General Outdoor Advertising Company controlled 80 per cent of the national outdoor advertising in the United States; it either is a fact or it is not or you don't know—whichever it may be.

MR. CLARK: I object to the question on the ground it has already been asked and answered. Counsel is plainly asking the witness whether or not under this contract to which counsel says Foster & Kleiser Company was not a party by name, as he puts it—if Foster & Kleiser Company, the Bureau, and the G. O. A., did not control 80 per cent of the business. I further object to it on the ground that the question is unfair and misleading.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 223.

THE WITNESS: I must admit that I am in no position to state what percentage of the business was controlled by the G. O. A. and the National Outdoor Advertising Bureau.

(Testimony of August F. Lausen)

Our arrangement with respect to paying commission from business coming to us through the Bureau and the G. O. A. was that we paid the source of the business 16-2/3 per cent commission. If the contract came through G. O. A. we paid G. O. A. or from whatever source the business came. We accepted business freely from non-bureau agencies. We have paid them various commissions at various times. We began to recognize agencies quite a number of years ago. The average percentage we paid non-Bureau agencies was probably ten per cent. We had restrictions on accepting business from non-Bureau agencies. The agency had to demonstrate to us that it was qualified to act as an agency for the particular company it was representing and that it was properly representing us to the advertisers; that it was equipped to transact business as a general advertising agency and it also had to make an application to us for recognition. If we accepted its application and recognized it as an agency, we paid him his ten per cent commission. I do not know who wrote this Bulletin No. 86, plaintiff's Exhibit 2-D in evidence. The phraseology sounds like our Mr. Thompson. I probably saw the bulletin at the time of its issuance. I am familiar with the policy that is set down there with respect to non-Bureau agencies.

I guess when Mr. Thompson says in that bulletin "In other words, if it is true that an agency actually controls the business and has the power to divert it to other channels, we should not lose this business through our own restrictions and regulations, but should recognize the influence governing the same and proceed on the basis that a man is worthy of his hire," he means that a man

is worthy of his hire. I do not know what restrictions and regulations the writer of the bulletin refers to. It does not mean that we would not accept business from a non-bureau agency at all, unless it was local business which my company had not contacted and with which it had no connection, and in which the local agency had the control of the business, in which case we would take it and pay the 10 per cent. That is not the meaning of that bulletin. That portion of the bulletin: "Business accepted from an agency should be business in which we have been of no influence whatever." And "However, the local customer upon whom we have exerted no influence should be most rare indeed, as it is the responsibility of the local sales department to thoroughly cover every possible user of our medium in the territory the responsibility for sales in which is theirs", is true. We are supposed to carry every potential user that there is in the Pacific Coast area and endeavor to get his business. The subject heading of the bulletin says: "Relation of Agencies Outside the Outdoor Bureau", so I presume that is what it refers to. Just to those agencies not members of the Bureau. The bulletin as a whole means that with a non-Bureau agency, we would then take it and pay them a commission of ten per cent. If they did not show that they developed it, they would not have any connection with the account as far as we were concerned. At that time the general agencies handled very few local accounts. It was a question in our minds as to the advisability of recognizing agencies who were interested in these local accounts, due to the fact that we maintained quite an aggressive local sales force and we were paying this local force to get the busi-

ness for us, and in lieu of a commission we were paying them salaries. If we recognized the agency on top of that and paid them a ten per cent commission, we would be paying a double commission. There were cases, however, where we might deem it advisable to recognize a certain agency for his effort on a particular local account, and each case of that sort was to be decided upon its merits. The National Outdoor Advertising Bureau was never interested in local accounts. Their interest and that of their members was primarily and almost exclusively in the development of large national accounts. Occasionally an agency did secure the handling of a local account appropriation, and we, at that particular time, did not feel that we should pay any agency handling local business any commission. I do not know, nor have I ever been informed of the contract or agreement by which the agency was tied to the Bureau.

Any independent plant can expand its services and produce facilities for the display of outdoor advertising. There is no restriction on any independent plant that I know of. In acquiring these plants we acquired some that were not franchise plants, and merged them with our own plants. If there were two plants in the town and we took one over, it became one plant. That would be a franchised plant and would become so under our membership. In acquiring these plants, we frequently paid more than the value of the physical assets. We paid what was considered the value of the plant to us. We did not pay more than the value of the physical assets for the purpose of obtaining the franchise. Franchises had no influence whatever in our securing these plants.

(Testimony of August F. Lausen)

In connection with sales of stock by my company, we at one time had our own salesmen sell stock. We issued a prospectus or instructions to the salesmen for information and instruction of our own salesmen. That prospectus states that franchises, leaseholds and national solicitorships are but an intangible value but at the same time are the very crux of the business and its most valuable asset. That is true. It is not true that they were the source of our national business. We placed a value on the franchise or membership because of the advantages that we got out of the association. The statement in there as follows: "For each of the 507 cities and towns in California, Oregon and Washington in which the Company operates, it holds a franchise from the Poster Advertising Association and the Outdoor Advertising Association. Through these franchises it receives from these associations all of the business which is created through them and placed in the Coast field. This is an exclusive privilege which brings to Foster and Kleiser the big national accounts from the eastern field," is a true statement, as is the statement that through the exclusive control of the leaseholds and its franchises the company is enabled to handle and control over 90 per cent of the outdoor advertising on the Pacific Coast. The statement in there: "The term 'national solicitorship' refers to the representation by the Company of national associations through which it obtains business originating in the Pacific Coast field to be placed in other fields upon which it receives a substantial sum on commission account," is true. Our national solicitorship had to do only with the business that we secured and sublet to other plant owners, for

(Testimony of August F. Lausen)

which we received a commission of 16-2/3 per cent. It did not get any business from other plants which they sold and placed with us. That was all that our national solicitorship represented to us; that is, the right to earn commissions by selling business and subletting it to other plant owners and the right to create business under the association's standards. We held these franchises so valuable because of our membership or affiliation with the association and the advantages that we derived from our membership. We did not place that value on it because of the production of business. As a general rule, plant owners through the United States were not engaged in selling. I think that at that time we were the only plant owner in the company that was engaged in the creation of national business. At that time Foster & Kleiser Company owned a majority of the plants on the Pacific Coast and by reason of the fact that we did have these facilities and we were members of the Association and that we were acquainted with all these plant owners through our membership in the Association, 90 per cent of the whole business that came to the Pacific Coast was executed by Foster & Kleiser Company. That was because of our membership in these associations and all of the other factors that go with it, the national solicitorships, our own selling ability and our connections, and the fact that we traveled to the East time and time again and interviewed not alone the solicitors but all of the advertisers as well and sold our services. The business eventually came to us through the franchises but it would not have come through unless we had the service there and unless we sold ourselves to these people. The mere fact that we had the facilities gave us the business.

(Testimony of August F. Lausen)

It is stated in this circular that in the last seven years Foster & Kleiser Company had paid approximately $1,150,000 more than the value of the physical assets which it obtained through the purchase of local plants and that this excess price was in recognition of the value of the franchise and leasehold accounts of the local plants. I can't say how much of that $1,150,000 we had paid in excess of the value of the physical assets because of these franchises. I think the balance sheet would explain that.

In 1921, 1922 and 1923 we were actively reaching out for the acquisition of smaller plants. At that time we had a man that traveled around and interviewed these plant owners but not for the sole purpose of acquiring the plants. That was Blaine Klum. We bought him out in Medford, Oregon, and after that he traveled around to interview plant owners. He had other duties to perform besides acquiring small plants. He ran our country paint department and sold walls. It is not a fact that we wanted to get all of these smaller plants out of business just as fast as we could. We have no desire to get anybody out of business. We believe that a better outdoor advertising service could be rendered under a single ownership. If you are asking my opinion, I believe that is the way the outdoor advertising business should be conducted. Mr. Kleiser probably made the same assertion. I never heard him make a statement to the effect that it was cheaper to bury them than to buy them out or to crush them in the shell. I don't know whether it is a fact that through the control of leaseholds, through these franchises and other means that we did have a natural monopoly in occupying our field to the exclusion of com-

petitors the same as a public utility. We presume you might call it a monopoly because we did by far the largest business, but I could not say that that was to the exclusion of anybody else, because anybody had the same right to enter the field as we had.

The following statement contained in Plaintiff's Exhibit 3-D was true at the time it was made: "Occupying this field as it does, controlling most of the desirable advertising locations and handling its business so as to give satisfaction alike to the advertiser and the public, the business of Foster and Kleiser Company is fairly comparable to that of a well organized and successful public utility corporation. As long as it is in position to serve, it obtains practically all of the big national outdoor advertising accounts originating in the eastern field through its affiliations with the large Eastern outdoor advertising companies and with the Poster Advertising Association and the Outdoor Advertising Association, from which it holds exclusive franchises for each of the cities and towns in which it operates. Competition, except in a small local way, is practically impossible for two reasons: In the first place, it would require investment of several million dollars to duplicate the Foster and Kleiser facilities for service on the Pacific Coast. In the second place, the exclusive control of desirable locations for its advertising units makes such duplication impracticable. As a result, the Company occupies its field, to all practical purposes, as effectively as the Pacific Gas & Electric Company or the Southern California Edison Company occupy their respective fields in the power business."

(Testimony of August F. Lausen)

I have often heard Mr. Kleiser make the statement that "there is no reason why Foster & Kleiser Company should not have all the desirable locations that there are on the Pacific Coast." I never heard him state that without locations competitors would have nothing to sell. That last statement is quite true, however.

With regard to Bulletin No. 74, written by Mr. Haynes, we needed that inventory in order that we might know what our competitors were doing in the territories in which we operated. We thought it was good judgment to have that information about our competitors. As general manager I authorized these various steps. I don't know of any other written instructions on the subject than Bulletin No. 74.

Referring to the statement in the bulletin, "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not. The only way to protect our investment in this business is to make competitors move and keep moving." The effect of making an outdoor advertiser move and keep moving his locations is that he will have to find another location on which to place his structure. That is a natural element in the business. I don't see any reason why he should not be able to find another location. If he can't find one he can't place a structure on it. The advertiser has a good deal to say under those circumstances. The moving of locations does not necessarily make it difficult as between us and the advertiser. The advertiser generally recognizes that that is one of the hazards of the business and realizes that he has the use of a particular loca-

tion until we lose it or something else happens to it. I never felt the moving of locations to be a serious obstacle in the handling of an account. I would not say that we didn't have any difficulty because if we had a location and had to go to the advertiser and tell him that we have lost it and submit another one as a substitute, naturally there is a hurdle in sales effort. The man was sold once, then we have to go back and sell him again. I can't say that it results in a lost of confidence.

In issuing Bulletin 74 we did not take into consideration what effect it might have upon competitors. The cause of this particular bulletin was the fact that we had just got through a very acute siege of competition here in Los Angeles. A competitor had come into the field long after we had been established and moved us off quite a number of locations. He started his plant on our locations so this bulletin was issued to have a record of what these locations were. Mr. LaFon had had no compunction whatsoever about establishing his plant and taking our locations away from us. We bought him out in 1921 but we had gone through that experience. We did not have very many leases here in Los Angeles. What we had were simply permits and it was a very easy matter to come in and secure permits away from us and move our locations. A good deal of LaFon's plant was built upon the locations that we were using and if it is good business ethics to the other fellow to move us we wanted to play the same game. We sent this bulletin to all branches whether there was any competition there or not. We felt that our investment in the business needed protection at all times as referred to in Bulletin 74. Mr. Haynes says

that the only way to do that was to move competitors and keep them moving. I would not say it was the only way but that was one way.

In 1924 when we issued Bulletins 242 and 242-A, competitors were still attacking our locations and we changed our contact schedule a little bit about that time. You can conduct posting successfully without locations in the tight districts. You can make up very good showings without any distribution in the tight districts. In making the statement in Bulletin 242 that "the only way to protest our investment in this business outside of sales effort is to make competitors move freely", was actuated by the same thing that moved us back in 1922.

Q. "We would have comparatively few worries if we could keep them outside of our tight district." How would that relieve you of worries, if you could keep all your competitors outside of the tight district, Mr. Lausen?

A. What little worry an advertising competitor gives us, why, if he was not there, that worry would not exist.

Q. You would just worry a little less if he was outside of the district, huh?

A. Yes, sir.

Q. Well, you wouldn't have to worry about him doing much bill posting, would you ,if he didn't have any locations at all in the tight district?

A. I should claim that we had quite a considerable volume of business in bill posting outside of the tight district.

Q. Wasn't your effort all directed towards moving your competitors out of the tight district?

(Testimony of August F. Lausen)

A. Our effort was directed toward controlling and having under our lease every available advantageous location that was in the tight district, for the reason that we never at any time, during our experience from 1920 on when the volume of business was increasing fast, we never at any time had sufficient locations within that tight district.

Q. And the mere fact that a competitor had them, that was just a detail; if you wanted them, you wanted to get them—was that it?

A. If we could get them legitimately and honestly and lawfully, yes, sir.

Q. Now, Mr. Lausen, isn't this about what happened: You created a card index or card record of every competitor's location, and you issued instructions—

A. Within certain districts, I presume.

Q. Yes—and you issued instructions that they were to be secured by your lease man whether you needed them or not? That is a written record, isn't it?

A. Whether we needed them or not at the time?

Q. It says so in the bulletin, doesn't it?

A. Well, that was never understood that way, whatever it says here. That was not our understanding nor was it ever interpreted that way by our lease managers, or anybody in our organization that had anything at all to do with leasing.

I am not familiar with all the details of this business. I wish I were. I recall that shortly after the commencement of this case my company applied for a bill of particulars.

(Testimony of August F. Lausen)

Q BY MR. GLENSOR: "A. F. Lausen, Jr., being first duly sworn, deposes and says"—and then I will skip some preliminary matter—"that although he is and has been closely in touch, both personally and through subordinate officers and employees of the defendant Foster & Kleiser Company, with the details of the business of the said defendant Foster & Kleiser Company, nevertheless, it is impossible for him in many instances to identify or determine with certainty or particularity the various sites," etc.

You remember making that affidavit, don't you?

A. Yes, sir.

Bulletins 74 and 242 remained in effect until the issuance of the lease manual which I think was put into operation in the latter part of 1924. I am informed that there was no actual cancellation sent out but that the manual superseded all previous instructions. I think those bulletins were definitely cancelled in Bulletin 550-A issued in 1931. For all practical purposes the lease manual superseded all previous instructions that had been issued in relation to leasing. There was an office record card on every competitive location. I don't know how many there were.

Q BY MR. GLENSOR: And it cost a good deal of money to get the cards printed and write them up, didn't it?

MR. CLARK: What is the difference whether it cost a lot of money or not? It is wholly immaterial and irrelevant. We object to it on those grounds.

THE COURT: Overruled.

(Testimony of August F. Lausen)

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 224.

A It would cost us so much a thousand to have the cards printed, five or six dollars a thousand, or whatever it was, I don't know.

(Witness continuing:)

Bulletin No. 524 issued on June 19, 1929, discontinued the use of the blue cards. The G. O. A. decree of June 19, 1929, might have had something to do with that. I don't know. I know that there was an investigation of Foster & Kleiser Company begun by the United States government long before 1931, but I don't think it was as early as 1929. I knew that in 1929 there were rumors that we were subject to an investigation by the United States government. I did not hear about that at the time of the G. O. A. decree. I heard about it when they came in to investigate us.

Bulletins 74 and 242 were superseded by the lease manual in 1924. That was well recognized by everybody in our organization that had anything at all to do with leasing. I have testified that I felt it was necessary for our company to carry about twenty to twenty-five per cent secured unbuilt space. That is to take care of growth and expansion and also loss of locations caused by buildings being erected, changes of ownership and various other means. Those were the only reasons why we carried secured unbuilt space. We never carried it for the purpose of keeping competitors from getting it. We never went

out to buy space for the sole purpose of keeping a competitor off of it. According to Plaintiff's Exhibit 16-YY, in January 1924 we had 893 unbuilt leases in Los Angeles; January 1925, 840; January 1926, 500. LaFon went into business the second time here in Los Angeles in 1926. In 1924 we had 736 unbuilt leases in Los Angeles; in 1928, 1268; in 1929, 1180; in 1930, 1185. We bought LaFon out in 1930. In 1931 we had 800 secured unbuilt leaseholds. The James decree was handed down here in Los Angeles on March 13, 1931. In 1932 we had 176 secured unbuilt leases in Los Angeles. All of those figures represent space that we secured and did not build to take care of natural expansion and normal loss of leases.

I know Walter Stevens who worked for us quite a while here in Los Angeles and in Seattle. He is with us yet in San Francisco. I remember that he came down here and worked in the lease department for a while and then went to Seattle as lease manager. According to Plaintiff's Exhibit 16-YY, in 1924 we had 285 unbuilt leases in the Seattle branch. In 1925, 314. Walter Stevens went to Seattle in 1925. In 1926 we had 437 unbuilt leases in Seattle in 1927, 554; in 1928, 628; in 1929, 539; in 1930, 538, and in 1931, 469. Those figures are all correct.

I think C. E. Stevens Company went into Portland in 1928. According to the Portland branch manager's report in December 1927 it was reported to our San Francisco office that there were prospects of Stevens building a plant in Portland. According to Plaintiff's Exhibit 16-YY we had 221 secured unbuilt leaseholds in 1924 in Portland: in 1925, 255; in 1926, 285; 1927, 376; 1928, 579; 1929, 590; 1930, 619; 1931, 529, and 1932, 300.

(Testimony of August F. Lausen)

I still maintain that we only secured and carried unbuilt space to take care of natural expansion and normal turnover in leases.

Thursday, January 17, 1935

Witness continuing: According to Plaintiff's Exhibit YY, table 7 apparently shows the amount paid by year for unbuilt space as of January of each year. For the year 1929, our obligations in January of 1929 for unbuilt space rental were $297,409. For 1930 it decreased to $289,056. It is my testimony that it was necessary to spend that amount of money for unbuilt locations in order to protect the normal growth of our plant and natural turn-over in lost locations. It is my opinion that during the period from 1924 to 1932 it was necessary and reasonable to carry 20 to 25 per cent unbuilt space for the purposes mentioned. According to this table, our built plant rentals over that period increased 24.79 per cent and our unbuilt rentals increased 112.9 per cent. In my opinion that relation of unbuilt to built is natural, normal and necessary for those purposes. On direct examination, I stated in substance in respect to contacting landlords who had leased their property to our competitors that it was our policy to lease for our use all of the advantageous outdoor advertising sites available where traffic was heavy and which would be of value to the advertiser, and that we did not lease locations to keep a competitor from getting them; that from 1917 to 1929 we never had more locations than we needed and that our policy as to competitors's locations was the same as to any other location, to-wit, if the competitor was on the

location and it became available, we endeavored to get it. I also testified that it was our policy to keep contact with competitors' locations but not to try to make the lessor dissatisfied or cause him to oust our competitor from the location. When I say, "If the competitor was on a location and it became available, we endeavored to get it", by becoming available, I mean that if the lease on that location had expired or had lapsed for non-payment of rent or change of ownership or for any reason, then the location was open for bids by us and if we could use that location to advantage, we endeavored to take it if we could get it on our terms. We never tried to take competitors' locations under any unfair circumstances or conditions or any other means.

I do not know anything concerning the lease which my company took on a site belonging to the Special Site Sign Company called the Banchero property on Telegraph Avenue, west side, 50 feet north of 60th Street. I know nothing of the details connected with any of the locations that we have. Nothing in connection with that was ever reported to me.

Q The evidence—and I am going to just summarize the evidence shown by your own records so that there won't be any dispute about it—is substantially this: That the Special Site Sign Company leased the site in 1925 at $6.00 a year and built a sign of some sort on it; and that your company took a lease on the site at $50.00 a year in 1927 and then took certain steps to get the Special Site Sign Company to remove their sign off of it, and they did move it off; and it is further in evidence that your company, at least, the records do not

(Testimony of August F. Lausen)

show that they ever built, and I think there has been some testimony given here that they never built any sign on the property, this Banchero property. Now, that, I take it, according to your testimony as to your leasing policy, was contrary to the policy of your company, wasn't it?

A I don't know. Perhaps. I don't know anything of the details. All I can express to you again, state to you again is what the policy is.

I can't state whether the action as indicated by our office record card was in accordance with our policy or not. I don't know whether what you have stated is correct or whether the card is right or what we have done. We have men that have charge of the responsibility of handling all of our leases and I suppose our counsel will bring those men forward. If that location was available under lapse of lease or any other reason and we had use for it and it was worth the money that we offered for it, our actions in connection with that location were not contrary to our policy. I note that our office record card, Plaintiff's Exhibit 131-B, shows that our officials made an offer of $18 on January 20, 1927 and that the Special Site Sign Company lease had expired, and that on January 22, 1927 we increased our offer to $24, and that there is a notation on the card that Special Site Sign Company had a 5-year continuation clause in their lease. Whether or not our actions as shown there were in accordance with our policy depends upon what the condition was at that time, at the end of the first year, the second year or the third year—whether the landlord was in a position to accept an offer from us,

which he evidently was, otherwise we would not have made one. If he was under obligation to the other leaseholder, he was not in a position to accept an offer from us. According to this card, on July 8, 1927, we took a three-year lease on that property at $50 a year. I presume our records would show whether we ever built a structure on that property or not. I cannot state whether the leasing of that property while the Special Site Sign Company were on it was in accordance with the competitive leasing policy of the company or not. I will admit that we are not infallible and that we make mistakes, but I doubt very much whether anybody would deliberately go out and violate the policy of the company. I can't say that this was done on this property or any other property.

I don't know anything about the Segin property on San Pablo, 75 feet north of 28th. Our office record card on that property shows that we took a lease on that property on October 3, 1928 of ten years at $6 a year. Assuming your statement to be correct, that the Special Site Sign Company had leased that property in 1925 at $4 a year and built a sign on it, I should say that the action of our company in taking this lease in 1927 was in accordance with the leasing policy of the company with respect to competitive locations.

I never heard of the Dutra location on Foothill Boulevard.

Q Now, the evidence in this case shows that the Special Site Sign Company had several signs on that location of Dutra from 1918 to 1927; and for the purposes of the question I am going to ask, I will ask you if you will please assume that to be the fact; there has been

(Testimony of August F. Lausen)

nothing to contradict it so far; and on the 28th of September, 1927, your company ground leased that property from one Sequeira, who I think acquired a lease on it from the owner and succeeded Dutra; Dutra had been a former lessee of the property, and then Sequeira got it; and assuming that the company never built on the property and that the entire transaction was cancelled in 1920. Now, would you say that that was or was not in accordance with the leasing policy of your company, the action taken on that Dutra site?

A I should say it was in accordance with the policy of the company.

On an office record card which refers to the property of Ohme & Hanson, 2365 San Pablo Avenue, I see these figures on the card "Form 21-5000-9-27". I guess that is the printer's form. It would indicate that 5000 of them were printed in September, 1927. I note the first entry on that card is dated in June, 1927. I have not the slightest idea how that happened. I see that the first entry on that card is that the site was under lease to Special Site Sign Company for ten years from August, 1926 at $30 per month for the first five years and $40 for the second five years. There are also various entries on the card down to March 7, 1930 indicating that our men had made contacts; also an entry on March 27, 1930, "Structure removed. S. S. S. have dropped and cancelled lease. We are not interested in location. Cancel. W. A. H." According to this card, after the Special Site Sign Company had removed their structure we lost interest in the matter. I don't know why, nor do I have any idea why they made all those contacts while Special

Site Company was on that location and then cancelled everything after they got off. I should have to ask the man who made the contacts.

On this card relating to the property of Helen S. Meyer, the entry on September 11, 1930 shows that the Special Site Sign Company's lease was officially cancelled. The phrase on the card, "Change grading to B-3" might have some reference to the grading of our leases. The last entry on that card under date of May 11, 1931 states that changed conditions now make it difficult to build and inadvisable for our use. I don't know why we lost interest in that site.

The card of the property of James Taylor at San Pablo and San Diego shows the property was under lease to Special Site Sign Company at $20 a year. It also shows that on May 31, 1929 a letter was written to our Sacramento office requesting a contact. That was the usual procedure where the owner happened to live in the territory of one of our other district branches. There is an entry on the card under date of June 30, 1933 that the structures were removed and the card was cancelled. I don't know why we lost interest in that site after Special Site removed its structure.

Q Well, to make this short, you don't know why—there are a number of these cards here that have been read in evidence, that show that as long as the Special Site were on the location, your men made contacts, but as soon as their signs were removed, that card was cancelled. You have no idea what portion of your policy that fitted into, do you?

A I have no knowledge whatsoever about those various locations.

(Testimony of August F. Lausen)

Q Well, in fact, would you say that that was in accordance with any part of your leasing policy with respect to competitive structures?

A All I can say is that I feel confident that all of the actions taken by our men were in accordance with the policy of our company. Of course, we all make mistakes, and I can't vouch that they never made a mistake.

I know the location of Westlake and Dexter in Seattle. I know that there was rather intense competition between ourselves and Stevens over that location. I don't know when we got in competition with them; the details came to me in the latter part of the proceedings there when the competitive situation was becoming rather acute.

Q Well, you had given up the property in June, 1924; in what manner did you still regard it as competitive property?

A Well, that was long after Stevens entered in on the property.

Q Long after?

A Long after; that is my knowledge of the thing.

According to a letter dated December 8, 1928, I was familiar with the fact that we were in competition for that property as early as that date. I had been in Seattle during the period from 1924 to 1928 and I presume I discussed the Westlake and Dexter situation with Mr. O'Neil while I was up there. The last paragraph of that letter reads as follows:

"Regarding your plan of petitioning the City of Seattle Board of Public Works to re-open their bid on the city property at Westlake and Dexter, I agree with Mr. McCord that you should be very certain of your ground, not

alone to see that you have the members of the board pledged to support us, but in view of our Eastern situation, I should like to have you submit everything including a copy of your petition and a copy of Mr. McCord's opinion and advice to us in San Francisco first, before taking any definite step."

Mr. McCord was our Seattle lawyer and the Eastern situation referred to in the letter is the investigation in the East that finally culminated in the Mack decree.

Apparently from this telegram, Plaintiff's Exhibit 59-R, dated February 15, 1930, I knew what was going on there from 1928 down to the date it was cleared. The reason we were bidding on the property and made all these efforts to get it was because we needed it as an advertising site.

Q And you were not doing this solely for the purpose of getting Stevens Company structures off the property, were you?

A No, sir.

I don't remember that we finally made a bid of $405 a month for that particular site. I remember that our bid was accepted by the Board of Public Works. I don't remember whether we ever built on that site. If I can find or produce any records indicating that we ever paid any rent after Stevens was taken off that property or that we ever built any structures on there, I will produce them. I presume the cause of my letter of December 8, 1928 was to caution the Seattle Branch to know that we were not doing anything in violation of any of our policies or in violation of anything that might come up in this investigation to which we were a party at that time.

(Testimony of August F. Lausen)

Nothing had come up that led me to believe that they even might be doing anything in violation of that policy. When we are in a lawsuit, I guess we have got to take a few more precautions to have legal advice.

Q Mr. Lausen, isn't it a fact that from the issuance of Bulletins 74 and 242, as reiterated in 242, you were making your—your company was making in its various branches a drive on the compeitors to get them out of the tight and extra tight districts?

A We were making no such drive. We were trying to secure for ourselves all of the locations that we could possibly secure that we could use in those tight districts.

The branch managers' reports all went to the assistant general manager's desk. Mr. Thompson was my assistant at that time. He discussed with me things that were reported by these branch managers whenever there was any matter that came up that needed discussion. If anything had come up in these branch managers' reports that indicated that the branch manager was doing anything contrary to the leasing policy I don't think he would have called my attention to it. He would have called it to the attention of the branch manager because that was his job. He would not have to take that up with me. To my knowledge, the company was not making any drive for the purpose of excluding our competitors from the tight or extra tight districts or to get their locations. I note the statement in this Seattle branch manager's report for April, 1927 as follows:

"competition is very active on Ranier Boulevard in the vicinity of the Ball Park and McClellan Street. We effected the removal of two illuminated posting panels on the Laurento property at Rainier and Holgate."

(Testimony of August F. Lausen)

I presume that property was in the tight district. They probably wanted to remove the panels from the Laurento property because they had use for them and in order to get the property for our own purposes.

Q The report goes on: "This is the result of a long siege and was accomplished only after careful and conscientious contact with an owner who feared legal entanglements."

Did you know that your branch managers were making a long siege on competitive locations?

A No, I did not.

Q Would you have considered it within or without your leasing policy on competitive locations if you had known it?

A If he was making a long siege to secure property, simply for the purpose of eliminating competitors without having use for that property, he was violating the rules of our company.

I guess those rules were in writing at that time. I think Bulletins 74 and 242 would cover that. The lease manual superseded 74 and 242 and whatever the policy of the company was, it was conveyed to them through that manual.

I note the statement in the San Diego branch manager's report for June, 1927, "Our sales department has been quite active the past month on Cordtz locations." I don't know that there was any special reason for special activities on the Cordtz locations in June, 1927 other than normal.

(Testimony of August F. Lausen)

Q You were not trying to—you did not want your branch manager to see that Cordtz found notices to move on his doorstep any morning, did you, Mr. Lausen?

A No, sir.

Q And you never told Mr. Cordtz that he might find 50 notices to move, either, did you?

A I absolutely never told him any such thing.

Q Of course not. See if you will follow that after the word "Locations." Maybe this is wrong, and if it is you correct me. "Has secured one lot just north of the Cordtz shop and office building where he has four units. Just secured 12th and Broadway on which he has six units; also two locations on which he has two suburban units on El Cajon Boulevard. The first two mentioned locations are in the tight district. We have also a promise of the location at Fourth and Laurel on which he has two De Luxe structures which will practically eliminate Mr. Cordtz from the extra tight district."

Now, do you know whether or not you had any particular reason in June, 1927, for eliminating Cordtz from the tight district—extra tight district?

A No more reason in June, 1927, than existed at any other time.

Q Of course not. Now, you wanted to eliminate him from the extra tight district all the time, didn't you?

A Not especially, no, sir.

Q Isn't it a fact that you did not want any competitive advertising structures in the tight or extra tight districts?

A The fact is that we wanted all of those locations if we could get them and if we could use them.

(Testimony of August F. Lausen)

Q Whether your comptitors were on them or whether they did not have them?

A Whether anybody was on them.

Q I just want to go on and see if you can't conclude with me that you were making a drive on your competitive locations. Long Beach, October, 1927. The second sentence "Three are old Cordtz paint locations and three are individual locations, of which two are poor." "He is having a hard time getting locations for his panels, and we expect to be able to have him continue to have a hard time." That was a part of your policy, too, at that time, to make your competitors have a hard time, if you could do it, getting locations in the tight and extra tight district, wasn't it, Mr. Lausen?

A I reiterate what our policy was. If we were making them have a hard time, it was just too bad, I guess.

Q Too bad for the competitors, surely. "Naturally, this has affected our rentals some, and no doubt will continue to increase our rentals." Now, you recognize, don't you, that the policy of making the competitor have a hard time caused you to spend a great deal of money on increased rentals, didn't it?

A If you will read all of the things together and not just pick out individual sentences, if you go through all of the reports that we get, you will find that when the competitors comes into the town the first thing that that competitor does is to raise our rents or endeavor to raise our rents and to secure our properties. Now, it is a very easy matter to take out a sentence from these letters and give an impression that this is all we were doing. It is only a very small portion of our business. We had no

endeavor to put a man out of business, but our endeavor was to secure all the locations that we could possibly use and if we could get them legitimately and lawfully, whether we hurt the competitor or not, why, we wanted those locations. You can show me a million of these, Mr. Glensor, and that is all I can say.

The expenditure of that money was not specifically to cause the competitor a hard time.

Cordtz was in business in San Diego for many years before we ever went in there. We bought out the McClintock plant, an established plant, to get in there. That was the franchised plant in San Diego.

Q Now, did Cordtz change his policy, to your knowledge, with respect to competitive leasing after you bought the McClintock plant?

A I don't know what his policy was before we got there.

I can't answer your question as to whether we ordinarily did not carry more unbuilt locations than West Coast in San Francisco, Stevens Company in Seattle, Portland and Tacoma, in San Diego with Cordtz and here with LaFon had in their whole plant built.

Q Now, I want to show you the Los Angeles branch manager's report for October, 1924, and I will take this one. The portion to which I refer is the portion that is marked on the margin in red pencil. "Space rental increased during the month to the amount of $183.00. There was, however, an increase of $584.00 in unbuilt space rent. This increase is covered by two locations at El Monte and Pasambra, northeast and northwest, at a rental of $500.00 and $900.00 respectively, which were

(Testimony of August F. Lausen)

transferred to this branch from the Restop Realty Company. We also secured eight other leases, for which it was necessary to make a high rental occasioned by the efforts we are concentrating upon our extra tight district. Our policy in this respect has been to segregate from our tight district twelve main arteries, which are now known as our extra tight district. By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a large area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them."

Now, were you concentrating on that extra tight district to get advertising locations which you needed in your business or to keep the opposition out?

A Concentrating our efforts to secure those locations to have them for our use.

Q Then, your branch manager's report is all wrong, when he says that "By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a larger area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them." Is that wrong?

A It is quite obvious that if we get them, the opposition can't get them.

(Testimony of August F. Lausen)

Q Oh, yes, right. I just want to call your attention to a Portland branch manager's report. May 3, 1927.

"Leasing Department activities are a little above normal due to the steady and consistent drive we are making on the extra tight and competitive locations. Since Mr. Haynes' visit we have quickened our leasing contacts on certain locations, and are pleased to report very satisfactory progress."

Did you know they were making a drive on competitive locations in Portland?

A Not specifically, no, sir.

Q And if they were, was it a part of or was it not a part of your leasing policy with respect to competitive locations in 1927?

A Whatever drive they were making was consistent with our policy.

This statement in the Portland branch manager's report of May 21, 1927 stating that a new bulletin concern known as Pacific Coast System has made its appearance in Salem and stating that the company is making every effort to lease up all desirable locations does not mean that they were leasing those locations to keep this new bulletin concern from getting them. If they leased them we would have use for them; they would not lease them just for the purpose of keeping the new bulletin concern from getting them. They concentrated on Salem business people, as referred to in that bulletin, because we would want the business if we could get it. We had evidently not made any concentrated effort in Salem prior to this new company coming in. It was not a part of the general policy of my company to crush these new competitors in the shell before they ever got a start.

(Testimony of August F. Lausen)

Q I will relieve you of that, Mr. Lausen. This, I think, goes with the other group. Now, after the reports of your branch managers which I have read to you and which you have read yourself, the long siege in Seattle, the drive on the tight district in Portland, the concentrated effort in Salem, the concentrated effort in Los Angeles on the extra tight district, the elimination of Cordtz from the tight and extra tight district in San Diego, do you still say that you were not making a drive on your competitors for the purpose of excluding them from the tight district?

A Yes, sir.

Q What did you mean by your bulletin 242, which you approved, when you said "If we could keep them out of the tight district, we would have little to worry about", or words to that effect?

A The meaning of that was that if we could obtain, under our policy, all of those locations in the tight district, we would have them under our control and would be able to use them, and probably have less worries from the other fellow coming in and making us move—as they always did.

I knew that the stock of the Special Site Sign Company was for sale prior to the time Mr. King and his brother came to my office. Mr. Potter and his attorney called at my office or some place before that. I remember we saw him and I knew about the fact that the stock was for sale. He did not tell me that if we would buy his stock, he could deliver the accounts or locations of the Special Site Sign Company; he made no mention of such fact. I knew Potter very, very slightly. I don't

(Testimony of August F. Lausen)

remember whether he had worked for Foster & Kleiser. I never saw him before that time he called on me. I presume I gave King a check for the stock when he delivered it to me in the Palace Hotel; I don't remember. Our arrangement had been for King to buy the stock and we were to pay King. I did not give King a check of Foster & Kleiser Company for the stock. I think I gave him the checks of Mr. Foster and Mr. Kleiser. I remember testifying on direct examination that we did not want the Special Site Sign Company at that time because King was dealing with a cheaper class of customers and was not in competition with Foster & Kleiser. I can't specify what accounts were on the boards of Special Site Sign Company in 1920. Our company did not buy that stock. King wanted to raise some money. I don't remember what he said he wanted but that was the price he put on his stock; and in the course of the conversation Mr. Kleiser suggested that it might be better all around if King would put his properties in with ours. They did not want to do that and the final arrangement was that Mr. Foster and Mr. Kleiser agreed to advance the money to help King out and as an investment too. King promised to send a statement over and he never did, so we made an audit.

I never knew that the under-cover work or Account A matter was going on in the first phase until the Neales came up to San Francisco to sell out to us. I then told Musaphia that that was contrary to our policies and that they should cease all those activities and never let it happen again. Prior to this written statement, Plaintiff's Exhibit 20-G, Musaphia and Young had gone to San

(Testimony of August F. Lausen)

Francisco and discussed with me the fact that they had reopened this account and operated against LaFon. That was about a month before this statement, Plaintiff's Exhibit 20-G, was made, somewhere around August 28th. I told them to come on back and go to the lawyers and make a complete full statement. I sent Mr. Haynes down to see that it was done. I can't remember who reported back. I know that this report or one similar to it was brought back. I don't know whether it was brought back by Mr. Haynes or Mr. Musaphia or all three of them. Mr. Haynes did come back and reported that he had carried out my instructions and had attended upon the making of this statement at the date this statement was made. Our company's relations with Musaphia were friendly and I know of no reason in the world why he should not have spoken the truth in this report. I have read this statement once. I saw it recently but I have not read it recently. I recall one statement in there which impressed me as not being strictly in accordance with the truth. The statement on page 5 reading as follows: "Mr. Musaphia: I want to say right here that at that time, at the time the De Luxe was taken over, we were instructed by Mr. Lausen and Mr. Kleiser to be very careful about any such operation in the future, as they felt they were very dangerous, and felt that at the time we took the De Luxe over, that those fellows had a good case against our company." is not a true statement of what I had said to him. The statement as a whole is substantially true. I did not tell him that I felt that the Neale Bros. or De Luxe Advertising Company had a good case against our company. I personally, as distinguished from the cor-

poration, learned that this account had been re-opened for operations against LaFon for the first time at the time when they came to San Francisco on August 28th or thereabouts. It was a matter of some surprise to me to find that positive instructions of mine had been disobeyed. I did not make any investigation to ascertain that this account had been re-opened and the under-cover operations resumed. At that time, my assistant, Mr. Thompson, was reviewing the branch managers' reports just the same as any other time.

It was thereupon stipulated that the De Luxe Advertising Company was acquired by Foster & Kleiser Company on October 3, 1924.

Witness continuing: It was very shortly prior to the purchase of the De Luxe that the Neale Brothers came to San Francisco and told me of the alleged unfair operations in the under-cover department. It was probably within a month of the date of purchase. I have no recollection that this statement in the branch manager's report from Los Angeles for September, dated September 22, 1924, "The increases in our establishment expense are represented chiefly by activities in account A." was ever called to my attention by Mr. Thompson. I have no recollection that the statement in the Los Angeles Branch manager's report for October, 1924, "The outstanding feature of establishment expense decrease was that of $1,576.00 due principally to decreased activities of account A." was called to my attention. None of those reports commenting upon Account A were called to my attention at all. I think the books of our branches were audited once or twice a year, at irregular intervals, by McClaren

(Testimony of August F. Lausen)

& Goode Company. I saw the McClaren & Goode Company audits. I don't remember having seen any items in there as to the amount of money which was spent on Account A.

Foster & Kleiser Company made the contacts and spent the money which they cost solely to keep in touch with all of the properties that we might want to use, and to ascertain when the sites occupied by the competitors would become available so we could lease them.

REDIRECT EXAMINATION

It was thereupon stipulated that the so-called Landis decree was dated July 6, 1916.

BY MR. CLARK:

That statement in Bulletin No. 242, "We should tie up and carry as secured unbuilt only such locations as we can use." was the policy of the company as I understood it at the date of that bulletin. The statement in that bulletin, "It being understood that we must have a reserve under lease to take the place of locations that are lost." was also the policy of the company at the date of that bulletin and it is the policy of the company now. The excerpt from Bulletin No. 242, "Naturally, when we have need of a location, we should endeavor to secure one within our tight district, rather than tying up one outside of it thereby working to the end of having all our structures on the choicest locations" expressed the policy of the company at the date of the bulletin in 1924 and it is our policy now and has been all the time from that time down to and including the present date. It was our policy as stated in the bulletin, "As previously stated, we want to

reduce our secured unbuilt rentals to the minimum and not spend money on locations unless we have or are going to have use for them in the immediate future." As I understood Bulletin No. 74 and Bulletin 242 when they were promulgated, it was not the intention of the company to take properties of any kind whether it could use it or not at any time whatsoever. Our policy was to secure for our use all of those properties that might become available that we had use for at that particular time or at some time in the near future. The concluding sentence in Bulletin No. 242 ,"Our policy should be to have the best leases in our possession that can possibly be secured, leases that cover locations that we can use and develop to give the maximum advertising value, expending the smallest amount of money that we can in order to accomplish it." was the policy of the company as I understood it at that time and has been the policy throughout.

With reference to the Dutra location concerning which I was asked on cross-examination, if, at the time the lessor of the Special Site Sign Company was a tenant of the owner, that the tenant's rights expired and the owner, through his authorized agent, put that tenant off and then authorized a new tenant to make a lease with Foster & Kleiser Company and Foster & Kleiser Company took it, that was in conformity with the policy of the company as I understood it, whether we needed the property or not at that time.

Q Did you always have need for property at some reasonable time in the future?

A Well, within those locations where we were short of space.

(Testimony of August F. Lausen)

When Stevens was attempting to secure locations in Seattle, those attempts quickened the competition for locations for outdoor advertising purposes. The competition of Stevens for locations in Seattle greatly increased the rate of rental paid for outdoor advertising locations. I was acquainted with the fact that Stevens himself boasted that his activities in Seattle had increased the rentals paid on properties for outdoor advertising purposes to the citizens of Seattle by $100,000 a year. When Stevens, LaFon, Special Site or any other competitor is in competition with Foster & Kleiser Company for any particular location it results in an increased number of contacts generally for that location and the price for the location goes up.

From 1915, when Foster & Kleiser Company, came into California, down to March 31, 1928, there was a continuous increase in the dollar volume of business that we did. Subsequent to March 31, 1928, there was a downward trend, the worst period of which was the fiscal year ending March 31, 1933, when the dollar volume of our business began to go down perceptibly. We tried to unload a number of our leases. We began first with unbuilt space because that was the easiest to unload. There were no structures on it and this influenced our decision to begin with the unbuilt leases first because there was no expense of removing the structures. We had to get rid of the space and we had to save money, and our next step was to try to cancel a number of the leases on which we had structures which were the least desirable. We cancelled a very considerable number of them. During the time that the dollar volume business of Foster & Kleiser Company was

on the increase, there was an increasing need for built space and our neeed for unbuilt space increased with the proportion that we increased our plant.

An exclusive solicitor is a man who devotes his time exclusively to the sale of the outdoor advertising medium. In other words, he is engaged in the business of selling outdoor advertising exclusive of other media of advertising. Subsequent to July 6, 1916, the date of the Landis decree, Foster & Kleiser Company had one of these national solicitorships from the Poster Advertising Association. That solicitorship which we had at that time was not exclusive in the sense that nobody else in California or no other corporation could get one.

There was another national solicitor in California subsequent to the date of the Landis decree and prior to the formation of the G. O. A. in 1925. It was the Poster Advertising Company. This so-called national solicitorship was really a recognition by the Poster Advertising Association of Foster & Kleiser's fitness and ability to represent the outdoor medium in the sale of it to advertisers located here on the Pacific Coast. We did not pay anything for that recognition. The solicitorship brought us all the information that the Association gathered, especially with regard to rates and data concerning outdoor advertising plants throughout the United States. Prior to the date of the Landis decree, we paid the Association a thousand dollars a year for the solicitorship. We did not pay anything after the Landis decree.

Q Did Foster & Kleiser Company in its capacity as a so-called national solicitor, or exclusive solicitor, as it was referred to yesterday afternoon, have any agreement

(Testimony of August F. Lausen)

r understanding, express or implied, with anybody, any lant owner or with any other national solicitor that it vould place on the boards of Association plants only the usiness or any part of it that Foster & Kleiser Company reated through its national solicitorship?

A We had no agreement.

Q Well, did Foster & Kleiser Company in any capacity ave any such agreement?

A No, sir.

I do not know what a monopoly is. In building up this usiness it was our intention and desire to create a busiess which would enable us to secure contracts for our lants in the greatest volume that we possibly could. We vanted to get all of the outdoor advertising business that ve could by fair means. Our desire and intention in leasng large numbers of outdoor advertising locations during hat entire period was to be able to utilize them in the conduct of our business and to enable us to place the displays of the advertisers on the locations which we secured. It was not the intention of Foster & Kleiser Company, either primarily or at all, to prevent competitors from coming into the field or to curb competitors after they came into the field or anything of that kind. It seems self-evident that at times when we got a lease that prevented competitors from getting a lease on the same property and when we got business to display on the outdoor advertising plant that prevented our competitor from getting it. Referring to the testimony concerning national business that came to Foster & Kleiser Company because of the effect or influence that the franchise in the Poster Association had, it is my opinion that the fundamental re-

quisite to the success of an outdoor advertising plant or any other business is to create a feeling of confidence in the minds of the advertisers with whom we are dealing. The Outdoor Advertising Association and the Poster Advertising Association had a great deal to do with creating the confidence of which I speak by bringing about a standardization in the medium and collecting all the promotional matter so that all these things could be placed before the advertiser who was at the point of using the medium Our medium is entirely different from other media in that it is not entirely in evidence before the advertiser; it is all outdoors, which covers a wide area. If an advertiser buys a page in a magazine such as the Saturday Evening Post, that page is laid before him and he knows what he is getting. He knows that there are two million copies distributed and this is guaranteed to him. He does not see that in the outdoor advertising. We cannot bring the panels before him and he has got to be assured when he makes a purchase that he is going to get what he pays for.

A single facing panel is one outdoor advertising panel that faces in one direction, as distinguished from a string of panels facing in the same direction. Foster & Kleiser adopted the single facing panel and began to work towards that end after we had taken over the Varney plant. When we took that over, they had long strings of boards adjoining and built on the ground. There were no separations by moldings or anything of that sort; it was one long fence on which the paper was posted. In the reconstruction of this plant we took down one-third of it and we had to replace a considerable portion of that in other locations. That increased our need for outdoor advertis-

ing locations because after we abandoned a third or any portion of them, we had to get new locations to re-locate the same footage. When we re-located this footage we had to secure additional unbuilt space because at that particular time we determined upon a new course in the plan of construction. The old method was to use practically every foot that was on a particular lot. If the location was on a corner, the old way was to build on the main thoroughfare facing it and then along the side street, building every foot that we possibly could. If the lot were 100 feet on one street and 100 feet on the cross street, we built 200 feet. The first step in the improvement was to take down those 200 feet and place four panels across the corner, angling to the traffic. It is obvious that if we took down 200 feet and replaced 100 feet that we had to go out and get another location that would accommodate another 100 feet of posting in order to maintain the capacity of the plant. That trend towards a single facing panel has increased as the years went by. A few years before this they brought an engineer into our company and it was his duty to supervise the construction of all these plants. He laid out a plan or course of procedure and each year we tried to cut down the number of panels that showed in one direction; for example, if we had four panels showing in one direction we cut it down to three panels and every time we did that it increased our need for space. It is my recollection that at one time there was a count made and we had an average of 45 panels facing in one direction. I think we have now an average of about one and one-half panels facing in the same direction. That goes to all of our plants on the Coast.

(Testimony of August F. Lausen)

If we have poster panels located upon a given piece of property, say, a corner lot, and we have acquired the property adjoining on each side of that lot and we have no panels on that adjoining property, that adjoining property is classified in our monthly reports as unbuilt space. We have to have leases on that adjoining property to protect the built panels in order to increase the value of the location and its visibility. The usual practice is that if we have a corner lot and also the lot adjoining the corner lot to build the panels on the lot adjoining the corner lot and hold the lots on the corner so as to give a greater value to the structure which is built on the adjoining lot.

Q BY MR. CLARK: Now, that matter that Mr. Glensor read to you—you were reading from paragraph 28 in that questionnaire—"What is meant by franchises, leaseholds, and national solicitorships?" The first paragraph reads: "While this is an intangible value, it is at the same time the very crux of the business and its most valuable asset, as it represents definitely that which has been built up over a long period of years at great expense and without which the company cannot operate." Now, if you want I will let you read that yourself and then I will ask you what that means.

A Well, that means good will.

Q Do you know any way of attributing, by rule or any other way, attributing a value to an outdoor advertising lease—excepting ground leases for a term of years when you have the property under lease for all purposes including outdoor advertising purposes?

A There is not any measuring stick to the value of a location.

(Testimony of August F. Lausen)

Q Any individual location?

A Any individual location—the value, to be used for outdoor advertising.

Mr. Clark explained to the court that he was developing from the witness the theory that after all, franchises and leaseholds, in the outdoor advertising business, mean simply goodwill, and that the solicitorship also had a goodwill value.

Q The third paragraph reads: "The term leaseholds refers to nearly 15,000 written leases into which the company has entered with property owners in three states, covering carefully selected locations for its displays. Both the cost of obtaining these leases, which involves the operation of a separate department of the business employing many men for this specific purpose, and the rental cost of such location, are written into annual expense and not set up in plant value. Through the exclusive control of these leaseholds and its franchises the company is enabled to handle and control over 90 per cent of the outdoor advertising on the Pacific Coast". You remember that language that was read to you yesterday?

A Yes ,sir.

Q Now, will you answer this question, please: In a going concern, such as Foster & Kleiser Company, is the large number of leases which Foster & Kleiser Company has up and down the Coast an element of goodwill, business goodwill?

A Yes, sir.

Q Do you know of any other way to value it?

A No

(Testimony of August F. Lausen)

MR. CLARK: I am speaking now of outdoor advertising alone, other than ground leases for a definite, fixed period of time, generally a long time, giving you the full right to the property.

I think that is all.

RECROSS EXAMINATION

BY MR. GLENSOR:

From March 31, 1928 the trend in the dollar volume of our business has been down right along every year. There has been a slight increase this past year. The lowest point in losses was March 31, 1933.

During that downward trend we had more unbuilt space than we wanted but we made no concerted attempt to cut it down until the latter part of 1931. It was along in that period that we started to unload unbuilt space, trying to save money, and then we tried to cancel leases. I don't think that we ever ceased our contacts on competitors' locations so far as the extra tight districts were concerned.

On direct examination I stated that during the upward trend of the business from 1916 to 1928 our unbuilt space increased in proportion to the increase in built space.

Q. Well, do you recall that I called your attention to the fact this morning that your built space had increased 24 per cent—I will leave off the fractional proceedings—and your unbuilt had increased 112 per cent; do you remember that?

A I remember those figures, yes, sir.

Q But you still think that the unbuilt ought to increase in proportion to the built, is that right? Is that right?

A Yes, sir.

(Testimony of August F. Lausen)

I also stated that the fundamental requisite of success in the outdoor advertising business is to create a feeling of confidence in the minds of the people with whom the outdoor advertiser is dealing. I should say that anything that undermines that confidence tends to discredit the outdoor advertiser with the business man and causes him to not make a success.

Q And then if Mr. Thompson is right in his statement made in the bulletin that I read to you yesterday, 523-A, that the constant moving of locations, or as he stated it, "even if the advertiser gets an erroneous idea that a location has been moved, it disturbs him ,and if it happens two or three times it tends to make him lose confidence"—that condition would be a great curb on the success of an outdoor advertiser, if Mr. Thompson was right, wouldn't it?

A Constant movement or loss of locations would probably disturb the advertiser's mind.

I testified that the statement to the effect that the leaseholds, national solicitorships and franchises were the very crux of the business meant, in substance, good-will.

Q Now, in 1920, I think you capitalized those at an even $3,000,000, increasing in 1923 to $3,400,000; if my figures are wrong, don't pay any attention to it, but it increased some, anyway. And you have continued to capitalize franchises and leaseholds down to 1932, according to this extract from Moody's Manual that I showed you yesterday; I will hand it to you right now; I have another one.

(Testimony of August F. Lausen)

Now, in 1932 you capitalized—wait a minute—in 1931 you capitalized your franchises and leaseholds at $6,198,-934.00 even. Do you see that figure? It is the fourth?

A Yes, sir; I got it.

Q The next year, in 1933, you capitalized leaseholds only at $6,198,934.00, the same figure, even money. Do you see that?

A Yes.

Q And the next year you added "good will" to that; you said leaseholds and good will $6,198,935.00," one dollar more. Do you see that?

A Yes, sir.

Q So, the good will amounted to exactly one dollar, is that right?

A Well, according to this typing here, you have leaseholds in 1932, and then the next year you have "leaseholds and good will."

Q Yes.

A And there is one dollar's difference.

Q Right. And the next year, '34, it is the same "leaseholds and good will $6,198,935.00"?

A Yes, sir.

REDIRECT EXAMINATION

BY MR. CLARK:

Mr. Glensor in his recross examination referred to an increase in unbuilt rentals of 112 per cent from 1924 to 1932 inclusive and an increase of 24 per cent in the plant. Those were not the figures I had in mind when I testified that unbuilt space increased in proportion to the increase in built space.

(Testimony of Frank T. Hopkins)

Thereupon

FRANK T. HOPKINS

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I am president and general manager of the National Outdoor Advertising Bureau, Incorporated. I have been associated with that concern since the fall of 1918. I myself have no business connection with Foster & Kleiser Company whatever, other than the sending of orders to them in the natural course of the business. I do not own any stock in Foster & Kleiser Company.

MR. GLENSOR: There was no necessity for you to qualify the witness as an expert. Ask him any question you want about the outdoor advertising business.

The Bureau was organized some time prior to the time that I came with it in 1918. It was organized by advertising agencies, what we term "general agencies." Those are the organizations that handle all kinds of advertising. They are not devoted exclusively to outdoor advertising. It was organized for the purpose, primarily, of securing recognition in the outdoor advertising field by agencies, was owned entirely by agencies whom we have generally terms "members of the Bureau", and it operated for them as their contact with the field of outdoor advertising for the promotion of the medium of outdoor advertising, or cooperating with them in the competitive selling of outdoor advertising and in the actual placing, handling and servicing of the business when we got orders to place.

(Testimony of Frank T. Hopkins)

The Bureau has never owned any plants nor do they have any interest of any kind in plants. We have approximately 200 members, none of which devote themselves exclusively to outdoor advertising. All of our member agencies handle all kinds of advertising. The Bureau handles only the standard forms of outdoor advertising.

We render the following service to our members: We promote the use of outdoor advertising with these members; we help them in the presentation of their plants; we make the estimates; we furnish the information that is necessary for the consideration of the medium; and when and if we get orders, we help to handle those orders, sublet them to plant owners all over the country and follow through on all of the elements of service, pay the bills to the plant owners, give shipping instructions to the lithographers for the shipment of paper, and check and inspect and do everything that goes into the servicing of an outdoor advertising account, and then collect the bills from the agencies.

The selection of plants on which outdoor advertising is to be done by one of our members is made by the agency or the advertiser or some representative of one or the other. We make no distinction whatsoever in handling or listing the plants of the so-called Association members and the so-called independent plants.

Q Have you any agreement with any person, Foster & Kleiser Company, or the General Outdoor Advertising Company, or any advertising company for the placing of business on that plant?

A We have no such agreement with anyone.

(Testimony of Frank T. Hopkins)

From the earliest days of outdoor advertising there was a school of thought in the business that leaned very definitely toward the idea that outdoor advertising should be sold entirely by exclusive solicitors as opposed to the general agencies. For a considerable period of time practically all national business was produced through the exclusive solicitors. Later on, general agencies became more important in the general field of advertising; and the agencies began to cast about for ways and means of securing recognition, as it was termed, in the field of outdoor advertising. One of the steps in that direction was the formation of what we call in the business the Bureau, National Outdoor Advertising Bureau.

The associations established the standard of practice and brought together the plant operators from all over the country. The associations were largely instrumental in getting owners to build plants in towns where there were no plants, especially the smaller towns. In fact it did about all of the things that made it possible to sell outdoor advertising as a national medium. The difficulty of selling outdoor advertising as a national medium at that time was principally a lack of standardization and a lack of any uniformity. Until the standardization took place, posting was sold in all kinds of sized units indiscriminately. Paint was sold pretty much the same way. This lack of uniformity made it almost impossible to sell the outdoor advertising medium as a medium of national advertising. Most of the outdoor advertising sold nationally in the early days was sold as paint, and that, to a large extent, was executed by the one company which would take the order.

(Testimony of Frank T. Hopkins)

The association itself has never sold any business in the sense of taking a contract and subletting it to plant owners.

Foster & Kleiser Company never refused to take any business from us. They were always quite ready to take business from anybody, either agencies or others.

After I went with the Bureau it finally arranged for an outlet for its outdoor business. It seemed that the Bureau should have some rather definite arrangement with some of the big operators in the field and when that failed after a long period of negotiations, the Bureau made an arrangement with the Thomas Cusack Company which allowed the Bureau to clear its business through the Cusack Company to the plant operators. That contract was made in 1918 and from then on until the formation of the General Outdoor Advertising Company in 1925, the greatest percentage of the business of the Bureau was cleared through the Cusack Company. We had some little business at all times that was placed direct with plant operators. The Thomas Cusack Company had plants scattered throughout all the large cities in the Eastern section of the United States.

It was thereupon stipulated by counsel for all parties that for convenience the Poster Advertising Association would be referred to as the "Poster Association" and the Outdoor Advertising Association as the "Paint Association", and the Poster Advertising Company as the "Selling Company".

Witness continuing: The Poster Advertising Company was a selling company primarily, selling posters.

(Testimony of Frank T. Hopkins)

The Bureau had many contracts which required posting in the Pacific Coast area where the Cusack Company did not have any plants. In such places where the Cusack Company had no plant of its own, the advertiser or the agency always had the privilege of designating the plants upon which the advertising was to be posted if there were competitive plants, or two or more plants in the same city.

The General Outdoor Advertising Company was formed in 1925, being a combination of the Thomas Cusack Company and another group of companies commonly known as the Fulton group, including the Poster Advertising Company. G. O. A. took over and asumed the assets of both groups.

After the G. O. A. was formed, the contract between the Cusack Company and the Bureau were taken over by the G. O. A. and rewritten. This printed copy marked Plaintiff's Exhibit 221 for Identification is a correct copy of that contract as rewritten.

BY MR. GLENSOR:

That is the only contract there ever was between the Bureau and the G. O. A. and is the one that was attached to the complaint in the case of United States v. General Outdoor Advertising Company and the Bureau and which was cancelled by consent in the decree.

The contract referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 221 in evidence, and is in words and figures as follows, to-wit:

[Plaintiff's Exhibit No. 221.]

MEMORANDUM OF AGREEMENT BETWEEN

National Outdoor Advertising Bureau, Inc.

and

General Outdoor Advertising Co., Inc.

National Outdoor Advertising Bureau, Inc.
F. T. HOPKINS, General Manager
H. F. GILHOFER, Western Manager

THIS CONTRACT, made this 24th day of August, 1925, by and between GENERAL OUTDOOR ADVERTISING CO., INC., a New Jersey corporation (hereinafter called "the Company") party of the first part, and NATIONAL OUTDOOR ADVERTISING BUREAU, INC., a New York corporation (hereinafter called "the Bureau"), party of the second part:

WITNESSETH:

That for and in consideration of the mutual covenants hereinafter contained and of the sum of One Dollar and other good and valuable considerations, by each of the parties to the other paid, receipt whereof is hereby acknowledged, the parties hereto do agree with each other as follows:

I. The Company hereby authorizes the Bureau, upon the terms and subject to the limitations hereinafter expressed, to solicit contracts for outdoor advertising to be executed upon outdoor advertising plants owned and/or operated by the Company, and, at the option of the Bureau, to solicit such contracts to be executed

upon such plants not owned and/or operated by the Company. For the purpose aforesaid, but for no other purpose, and subject always to the terms and limitations expressed in this contract, the Bureau shall be deemed to and shall be the agent of the Company.

II. The Company shall forthwith furnish to the Bureau a complete memorandum of the standard or card rates applicable to that portion of the display advertising plants and bulletins owned and/or operated by the Company with respect to which standard or card rates have been established. If the Company shall at any time make any change and/or changes in the said standard or card rates, the Company shall notify the Bureau of such change and/or changes at least thirty days prior to the date upon which the same shall become effective and not later than the Company shall give notice thereof to any soliciting unit other than the Bureau, including its own direct sales organization.

The Company shall also from time to time furnish to the Bureau full information regarding the painted and electric display bulletins owned and/or operated by the Company with respect to which no standard or card rates shall have been established and of all special rates or terms upon which such bulletins may be offered to advertisers, and shall furnish to the Bureau copies of all bulletins of rate space and service information prepared by the Company for the use of its own direct sales organization and/or any other soliciting unit.

The Company shall also from time to time furnish to the Bureau full information at the time possessed by the Company regarding outdoor advertising plants other than those owned and/or operated by the Company, and in

all its transactions with any such plant and/or plants with respect to the Bureau business, the Company shall observe the same care and endeavor to obtain the same service as in connection with business developed by its own direct sales organization.

It is the intention and purpose of this article of this contract that the Bureau shall at all times have available to it for the purposes of its solicitation under this contract, full, accurate and current information regarding the outdoor advertising plants owned and/or operated by the Company and of the terms, both standard and special, if any, which at the time may be offered to advertisers, and that the position of the Bureau in this respect shall be fully as favorable as that of the Company's own direct sales organization; further, that the Company shall cooperate in every way with the Bureau in its effort to secure full recognition as a solicitor from all the owners of outdoor advertising plants and/or the Poster Advertising Association to the end that the Bureau may secure from all currently standard commissions, terms and facilities.

All contracts procured by the Bureau to be carried out upon plants owned and/or operated by the Company shall be at rates established by the Company, whether standard or special, and no allowance, rebate, adjustment, concession, cut-rate and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made and/or allowed by the Bureau and/or by the advertising agency or person connected and/or affiliated therewith. Similarly, all contracts obtained by the Company by direct solicitation shall be at the Company's current rates, standard or special, and no allow-

ance, rebate, adjustment, concession, cut-rate and/or free service and/or other terms the effect of which would be to reduce and/or modify such rates, shall be made or allowed by the Company. The Company shall also use its best endeavors to see that the aforesaid practice is followed by all solicitors of outdoor advertising with respect to all contracts to be performed upon plants owned and/or operated by the Company.

III. All advertising contracts procured and/or obtained by the Bureau shall be subject to the written acceptance thereof by the Company, signed by an officer of the Company duly authorized. The action and policy of the Company with respect to acceptance of all such contracts shall be in accordance with the general policies of the Company at the time in force and in respect thereof the Company shall accord to the Bureau as great a degree of consideration and as favorable treatment as the Company shall accord to any other soliciting unit, including the Company's own sales force engaged in direct solicitation.

IV. Any and all advertising contracts, procured and/or obtained by the Bureau to be performed by the Company, shall forthwith be assigned by the Bureau to the Company.

V. The Company shall pay to the Bureau in full of all compensation and expenses of the Bureau a commission of twelve per cent (12%) computed upon all amounts actually paid by advertisers under contracts for outdoor advertising procured and/or obtained by the Bureau for the Company and accepted by, and assigned to the Company as hereinbefore provided (including all contracts to be carried out either in whole or in part upon advertising

plants other than those owned and/or operated by the Company), and in respect of which the Company shall receive payment.

In practice, the Company shall currently render invoices for service performed by the Company under contracts obtained by the Bureau upon a special form or forms similar to those now in use and which shall appropriately display the name of the Company and the Bureau. All such invoices shall be rendered to the Agencies respectively through whom the contracts respectively shall have been obtained, and duplicates thereof shall be furnished to the Bureau. Such Agencies shall in remitting deduct the amount of the commission, not exceeding twelve per cent. (12%), which may be payable to them under arrangements currently existing between them and the Bureau, of which the Company shall have had previous written notice, and shall pay the amount of the invoice, less such deduction, to the Company. On the first day of each month during the term of this contract, the Company shall render to the Bureau a true and correct report of the amount of the invoices with respect to which the Company shall have received payment as aforesaid to the twentieth day of the preceding calendar month and not theretofore returned to the Bureau, and therewith the Company shall pay to the Bureau an amount equivalent to the difference between twelve per cent. (12%) of the aggregate face amount of such invoices and the aggregate of the amounts in respect thereof returned by the agencies as aforesaid.

By way of explanation of the foregoing, the amount which would be retained by an Agency under the foregoing provisions and under arrangements presently ex-

isting between the Agencies and Bureau would be ten per cent. (10%) of the face amount of the invoice, and the amount payable to the Bureau by the Company would be two per cent. (2%) thereof.

The Bureau shall aid and assist the Company, in so far as may be practicable, in the collection of accounts due from advertisers and/or Agencies under any and all contracts aforesaid.

VI. So long as the accounts of the advertisers whose names are set forth upon a schedule thereof hereto annexed marked Exhibit A and by reference made a part hereof, are active in outdoor advertising and are upon the books of the Bureau and/or an advertising Agency which at the time shall be affiliated and/or connected with the Bureau, the Company shall refrain from any solicitation of the said advertisers. Excepting as may be hereafter otherwise agreed on in writing by the parties hereto, the Company shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Bureau and/or any affiliated or connected Agency, and/or if such account and/or accounts, though remaining on the books of the Bureau and/or any affiliated or connected Agency, shall become inactive in outdoor advertising.

So long as the accounts of the advertisers shown upon a schedule thereof hereto annexed marked Exhibit B and by reference made a part hereof, are upon the books of the Company and are active in outdoor advertising, the Bureau shall have no authority to solicit contracts for outdoor advertising from the said advertisers, and the Bureau and its affiliated and connected agencies shall

refrain from solicitation thereof. The Bureau, however, shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Company and/or if such account and/or accounts, though remaining on the books of the Company, shall become inactive in outdoor advertising.

Seasonal or periodical accounts shall not be deemed inactive during the normal period of their suspension.

Accounts acquired hereafter by the Bureau or the Company shall be automatically added respectively to Exhibits A and B, and thereupon shall become subject to the pertinent provisions of this article of this contract.

All accounts at the time not included among the accounts currently listed in Exhibits A and B shall be open to solicitation by either the Company or the Bureau, excepting as may be otherwise hereafter agreed upon in writing.

VII. The Company shall forthwith in aid of the sales effort of the Bureau, establish an adequate department composed of capable and experienced representatives who shall cooperate with the Bureau and/or its affiliated Agencies in securing and servicing outdoor advertising accounts through the Bureau and/or its affiliated Agencies only. Excepting as may be otherwise agreed from time to time, the Company, however, shall not be obligated to furnish the services of any person in the department aforesaid for actual participation in negotiations with advertisers whose accounts are at the time the subject of active competitive solicitation by the Bureau and the Company.

The Company at all times shall use all diligence in executing all contracts procured by the Bureau and accepted by the Company, and in performing all such contracts the Company shall in all branches of its service, excepting those having to do with the creation and development of design, copy, and ideas for the merchandising of the advertiser's product, assist and cooperate with the Bureau fully and as fully as with any other solicitor of contracts for outdoor advertising, including the Company's own sales force. The Bureau and its affiliated and connected Agencies shall use and employ its and their best endeavors in the development and extension of the use of the outdoor medium and in the solicitation of contracts to be performed upon the plants and bulletins of the Company.

The Bureau shall at all times during the term of this contract apply a reasonable portion of its total revenues to the employment of competent salesmen soliciting outdoor advertising.

VIII. Each contract for outdoor advertising tendered by the Bureau to the Company shall be plainly marked or stamped with the name of the Agency affiliated or connected with the Bureau by which the contract shall have been procured. If any such Agency shall perform any act which, if done by the Bureau, would be a breach of this contract, or omit to do any act which, if omitted by the Bureau, would be a breach of this contract, and shall fail to make good such default after reasonable written notice thereof to the Agency and to the Bureau, the Company shall have the right to refuse to pay any commissions with respect to contracts for outdoor advertising thereafter procured by such agency, for such time as the

Company, in its sole discretion, may determine, but neither the Bureau nor its affiliated or connected Agencies other than the Agency in default shall be under any liability with respect to such a default.

All contracts made by the Company with plant owners other than the Company with respect to the execution of outdoor advertising service required under any contract procured by the Bureau and not to be performed on the outdoor advertising plants owned and/or operated by the Company shall be stamped or marked with the name of the Bureau.

IX. The term "outdoor advertising" shall be construed to include poster advertising, painted display advertising, electrical display advertising, and any and all other forms of advertising now or hereafter developed and/or engaged in by the Company.

X. Anything hereinbefore contained apparently to the contrary notwithstanding, no commissions shall be payable by the Company to the Bureau with respect to "local business" under contracts and/or renewals hereafter obtained, excepting the "local business" accounts shown upon Exhibit A with respect to which commmissions shall be paid at the rate and in the manner provided by paragraph V of this contract.

The term "local business" shall be construed to mean all contracts for outdoor advertising for account of any person operating a retail merchandising business within the city, town or village in which the contract is to be performed.

XI. The Company recognizes that the cost of the service to be rendered by the Bureau, as contemplated by

this contract, will exceed the cost of the service commonly performed in connection with outdoor advertising by a general advertising agency. To avoid discrimination against the Bureau and in favor of any general advertising agency, the Company shall pay to any such general advertising agency commissions upon business produced at not more than the maximum rate of ten per cent. (10%).

XII. This contract shall continue and be in full force for a minimum period of five years from the date hereof, which period shall be automatically extended by an additional year for each year of operation hereafter under it or it as so extended, until notice in writing be given by either party to the other of its desire to terminate the same. Following the giving of such notice the period of this contract shall continue to and terminate at five years from the end of the year of the contract in which such notice be given. Any such notice shall be in writing, subscribed by the party giving the same, enclosed in a customary envelope or wrapper, addressed to the Company at its then executive office in the City of New York, and to the Bureau at its then executive office in the City of New York, and shall be complete from the time of deposit thereof as aforesaid, postage prepaid, in any United States post-office, official mail box and/or official mail chute.

Upon the expiration or sooner termination of this contract, all current contracts for outdoor advertising theretofore assigned by the Bureau to the Company shall be forthwith reassigned to the Bureau.

XIII. The parties shall cause the contract between Thomas Cusack Company and the Bureau, dated November 19, 1918, to be cancelled as of the date of this contract.

XIV. This contract shall extend and apply to the Company and to all and singular the corporations controlled and/or operated by the Company.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

GENERAL OUTDOOR ADVERTISING CO., INC.

By Kerwin H. Fulton (signed)
PRESIDENT

Attest:

Geo L. Johnson (signed)

NATIONAL OUTDOOR ADVERTISING BUREAU, INC.

By Geo. C. Sherman (signed)
PRESIDENT

Attest:

F. T. Hopkins (signed)

EXHIBIT "A"

BUREAU ACCOUNTS

Akron Baking Co.
A. C. Spark Plug Co.
Alcone Knitting Co.
American Bank & Trust Co., New Orleans, La.
American Chain Co.
American Biscuit Co.
American Hosiery Co.
American Lead Pencil Co.
Anderson Spring Lubricator Co.
Anglo California Trust Co., San Francisco, Calif.
Arcadia Cafe, Philadelphia
Art Lamp Mfg. Co.
Aspegren & Co.
Associated Oil Co.
Aquazone Corp.
Atlas Brewing Co.
Atmore & Son, Inc.
Atwater Kent Mfg. Co.
Aunt Jemima Mills Co.
Austin Nichols & Co.
Axton Fisher Tobacco Co.
Arrowhead Springs Corp.
Aines Farm Dairy Co., Kansas City
B. V. D. Corp.
Ballard & Ballard
Bauerlein, Inc.
Bayuk Cigars, Inc.
Beich, Paul F.
Bellingham Coal Mines

Bendix Brake Co.
Benzo Gas Motor Fuel Co.
Bernet Kraft & Kaufmann Milling Co.
Best Clymer Co.
Biflex Corp.
Bird & Son
Bishop & Co., Los Angeles, Cal.
Blanchard-Rowe & Co., Chicago, Ill.
Blanke Wenneker Candy Co.
Blauer-Goldstone Co.
Boardman & Son, Wm., Co.
Boyle Valve Co.
Bonar Phelps
Boncilla
Bonita Co.
Borden Co.
Bowman Dairy Co., Chicago, Ill.
Brandenstein, M. J., Co.
Brevoort Hotel, Chicago
Breyer Ice Cream Co.
British Columbia Shingles, Ltd.
Bronx Baths
Brooks Tomato Products Co.
Buffalo Rock Co.
Buick Motor Co. (Including dealer accounts)
Bulletin (San Francisco)
Bunte Bros. Candy Co.
Burlington Overall Mfg. Co.
By Products Coke Corp.
Cadillac Motor Co. (Including dealer accounts)
California Conserving Co.
California Packing Corp.

California Fruit Growers Exchange
California Walnut Growers Assn.
Calumet Baking Powder Co.
Calumet Gas & Electric Co.
Campbell Ewald Co.
Canepa, John B., Co.
Chicago & Eastern Ill. R. R.
Chapin-Sacks Corp.
Chase Candy Co.
Chero-Cola Co.
Coca Cola Co. (Posting only)
Cherokee Fuel Co.
Chevrolet Motor Co. (Including dealer accounts)
Chicago By Products Coke Co.
Chicago Flexible Shaft Co.
Chrysler Motor Car Co. (Including dealer accounts)
Chicago, Milwaukee & St. Paul R. R.
Chicago Motor Club
Chicago Wilmington & Franklin Coal Co.
Cities Service Oil Co.
Citrus Soap Co. of California
City Baking Co., Baltimore
Cleveland Metal Products Co.
Cluett Peabody Co.
Cochran & McCluer Co., Chicago, Ill.
Columbia Tire Corp., Portland, Ore.
Congoleum-Nairn, Inc.
Consolidated Wafer Co.
Continental Oil Co.
Corby Baking Co.
Cosby, W. M. (Flour)
Crescent Mfg. Co.

Cressman's, Allen R., Sons
Crew Levick Co.
Cuyamel Fruit Co., New Orleans
Fruit Dispatch Co., New Orleans
Standard Fruit & Steamship Co.
Curtiss Candy Co.
Cushman Sons, Inc.
D'Arcy Advertising Co.
Davidson Investment Co., Los Angeles, Cal.
Davis Co.
Decker, Jacob E., & Sons
Denver Dry Goods Co.
Denver Park & Amusement Co.
DeWitt Bros.
Dodge Bros. (Including dealer accounts)
Eagle Wabash Corp.
Early & Daniels Co.
Easton, Gilbert J., Co.
Eitel, Inc.
Eldridge Buick Co.
Electric Storage Battery Co.
Electric Vacuum Cleaner Co.
Elitch Gardens Co.
Epply Hotels Co.
Escelante, Jose Co.
Factor, Max & Co.
Famous Players Lasky Corp.
Faultless Starch Co.
Fellows Gasoline Co.
Felton Sibley & Co.
Ferrara Pan Confections Co.
Fitzpatrick Bros., Inc., Chicago, Ill.

Fleischmann Co.
Foege, John & Son
Folger, J. A. & Co. (Pacific Coast Display only)
Fontana Hollywood Co.
Foor & Robinson Hotels Co.
Forbes Tea & Coffee Co.
Ford Motor Co. (Including dealer accounts)
Four Wheel Drive Co.
Franklin Trust Co. (Philadelphia, Pa.)
Freed Eisemann Radio Co.
Freihofer Baking Co.
Freihoefer, Wm., Baking Co.
French, R. T. Co.
French Lick Springs Hotel
Furness Bermuda Lines
Fryac Mfg. Co.
Gardner Motor Co. (Including dealer accounts)
General Motors Chemical Co.
General Motors Co. (Unnamed car)
General Petroleum Co.
General Storage Battery Co.
General Tire & Rubber Co.
Gibbons & Gordon Hardware Co.
Gibbs Preserving Co.
Gilbert, A. C., Co.
Gill, J. K., Co., Portland, Ore.
Gilpin Langdon & Co.
Glenwood Springs Chamber of Commerce (Local)
Globe Electric Co.
Golden Key Milk Products Co.
Golden State Milk Products Co.
Golden West Knitting Mills

Goldman, Wm. P. & Bros.
Good Grape Co.
Goodman, A. & Sons
Goodrich Transit Co.
Gould Dreadnaught Battery
Gould Storage Battery Co. (Including dealer accounts)
Graham Bros.
Great Lake Auto Products Co.
Great Northern Railroad
Great Western Sugar Co.
Greater Louisville Bldg. & Loan (Local)
Green Circle Products Co.
Grinnell Company
Grunewald Caterers
Hamilton-Carhartt Cotton Mills
Hardeman, J. T., Hat Co.
Hanff Metzger
Harrow Taylor Butter Co.
Harris, Goar Co.
Harris, Frank & Sons
Harrison Radiator Co.
Hearst Properties (International) (Chicago American)
Hedstrom-Schenck Coal Co.
Heinz, H. J., Co.
Henrici, Philip, Co. (Local)
Hills Bros. Co.
Hirsch Weiss (Tents)
Hirsch Wickwire Co.
Hoffman, Paul G., Co., Los Angeles, Cal.
Holley Carburetor Co.
Holstein Products Co.
Home Electric Co., Phila.

Horn & Hardart
Horstmann, Wm., Co.
Hotel Knickerbocker, Atlantic City
Hotels Statler Co., Inc.
Hupp Motor Car Co. (Including dealer accounts)
Hyatt Roller Bearing Co.
Illinois Central Railroad
Illinois Merchants Trust Co. (Chicago, Ill.)
Independent Oil Companies (Various cities & towns)
Indian Refining Co.
Individual Drinking Cup Co.
Industrial Loan Co., St. Louis, Mo.
International Coffee Co.
Interstate Grocer Co.
Ice Cream Package Co.
Ives Mfg. Co.
Jaeger, Oswald Baking Co.
Jantzen Knitting Mills
Jerry Jane, Inc.
Jewell Tea Co.
Jewett & Sherman
Joannes Bros.
Johnston, Robt. A., Co.
Jones Store Co., Kansas City, Mo.
Ju-Ji, Inc.
Jell Well Dessert Co.
Kaestner & Hecht Co.
Kahn, E., & Co., Chicago, Ill.
Kauffman, Chas. & Bros.
Katmaier Coal Co.
Kenton Baking Powder Co.
Keystone Roofing Co.

Jordan Motor Car Co. (Including dealer accounts)
Jones Dairy Farm Co.
Keystone Varnish Co.
King Candy Co.
Klaxon Co.
Kleiber & Co., San Francisco
Kleinert, I. B., Rubber Co.
Kolb Building Co.
Kraft, J. L., & Bros. Co.
Lakeland, Fla., Chamber of Commerce
Laprez, Thos. J., Inc.
Lee, H. D., Mercantile Co.
Lever Bros. (Olva Soap only)
Libby McNeil & Libby
Liberty Central Trust Co., St. Louis, Mo.
Liberty Products Co.
Lit Bros., Philadelphia, Pa.
Log Cabin Baking Co.
Louisville Used Car Co. (Local)
Luick Ice Cream Co.
Lumaghi Coal Co.
Lubrite Refining Co., St. Louis, Mo.
McCawley & Co.
McCord-Brady Co.
McCray Refrigerator Co.
McFadden Publications
Made Good Ice Cream Co., Tamaqua, Pa.
Mallinson, H. R., & Co.
Majestic Electric Appliance Co.
Mann, Wm., Co.
Marigold Dancing Gardens, Chicago, Ill.
Marine Bank & Trust Co., New Orleans, La.

Mason Tire & Rubber Co.
Maury Cole, Inc.
Maxwell Motor Sales Corp. (Including dealer accounts)
May Breath Co.
Mercantile Trust Co., St. Louis, Mo.
Merchants National Bank, Richmond, Va.
Meriden Creamery Co., Kansas City (Local)
Metropolitan Business College, Chicago
Mexican Petroleum Corp.
Meyer Bros. Coffee & Spice Co.
Midland Flour Milling Co.
Migel, J. A., Inc.
Millard Hats, Inc.
Miller, E. C., Cedar Lumber Co.
Miller Mfg. Co. (Ready built houses)
Milwaukee Corrugating Co.
Minnesota Co-op. Creameries
Mishawaka Rubber & Woolen Co.
Missouri Pacific Railroad
Mohawk Rubber
Model Baking Co. (Local)
Morris Plan Bank of Cleveland
Moon Motor Car Co. (Including dealer accounts)
Music Master Corp.
Nash Motors, Inc., (Including dealer accounts)
National Beverage Sales Co.
National Family Laundry, New York
National Fruit Flavor
National Grocery Co.
National Petroleum News
National Refrigerator Co.
Neustradter Bros.

Newmark Bros.
Norris, Inc.
Northern Kansas City Development Co.
Northern Indiana Gas & Elec. Co.
Northern Pacific R. R.
Northwestern Yeast Co.
Novelty Mill Co.
Nugrape Bottling Co.
Nugrape Bottling Co. of Atlanta
Nugrape Co. of Alabama
Nugrape Co. of America
Nugrape Co. of Delaware
Nugrape Co. of Florida
Nugrape Co. of Louisiana
Nugrape Co. of Tennessee
Nugrape Co. of Washington, D. C.
Nunnally Co.
Nunn Bush Weldon Shoe Co.
Oakland Motor Car Co. (including dealer accounts)
O'Bryan Bros.
Olson Rug Co.
Olympia Knitting Mills
Olympia Oyster Growers Assn.
Ontra Cafeteria, (Chicago and vicinity)
Oppenheimer, A. E., Co.
Orange Crush Co.
Oregon City Woolen Mills
The Pabst Corp.
Pacific Coast Biscuit Co.
Pacific Coast Coal Co.
Pacific Power Light Co.
Pacific Coast Shredded Wheat Co.

Pacific Steamship Co. (Admiral Line)
Packard Motor Car Co. (Including dealer accounts)
Pan-American Petroleum Co.
Pan-American Petroleum & Transport Co.
Paraffine Companies
Parker Gordon Cigar Co.
Parker Pen Co.
Parsons-Scoville Co.
Paul, J. C. & Co.
Pedrick, Frank J. & Son
Peet Bros. Co.
Penick & Ford, Ltd.
Penn Tobacco Co.
Pennzoil Co.
Peoples Gas Light & Coke Co., Chicago
Peoples Gas Stores, Inc., Chicago
Pet Milk Co.
Phelan Faust Paint Mfg. Co.
Puget Sound Power & Light Co.
Phenix Cheese Co.
Phillips Jones Corp.
Planters Nut & Chocolate Co.
Poole Engineering & Machine Co.
Pooley Co.
Popper, E. & Co.
Portland Chamber of Commerce, Portland, Ore.
Power Plant Engineering Co., Seattle
Premier Vacuum Cleaner Co.
Public Ledger
Public Service of Northern Ill.
Puhl, John, Products Co.
Puroxia Co.

Quinby, W. S., Co.
Radio Corp. of America
Red Rock Creamery
Regular Democratic Organization, New Orleans
Reliance Mfg. Co.
Rexall Club
Richards Wilcox Mfg. Co.
Richardson Corp.
Ridenour Baker Grocery Co.
Rosenberg Bros. (Fashion Park Clothes)
Rumford Chemical Works
Salmen Brick & Lumber Co.
San Francisco Bulletins
Sauers Milling Co.
Sawyer Biscuit Co.
Schalk Chemical Co.
Scheidt, Adam, Brewing Co.
Schmitt Bros. Tobacco Co.
Schoenhofen Co.
Scruggs, Vandervoort & Barney Co.
Scudders Gale Grocery Co.
Seacrest Laundry, Woodside, L. I.
Seeman Bros.
Seidenberg & Co. (American Cigar)
Sherwin Williams Co.
Simplex Windshield Wing Co.
Sitroux Importing Co.
Skelley Oil Co.
Smith, J. P., Shoe Co.
Southern California Fair Assn.

Spalding, A. G., & Bros.
Stanard Tilton Milling Co.
Standard Oil Co. of La.
Standard Oil Co. of N. Y.
Standard Oil Co. of N. J.
Stanley, John T., Co.
Steinhart & Bros., N. Y.
Stewart Sand Co.
Stewart Warner Co.
St. Louis Dairy Co.
St. Louis Post Dispatch
St. Mungo Mfg. Co.
Streckfus Steamboat Lines
Stromberg Motor Devices Co.
Sugar Creek Creamery Co.
Sulzer, Carl & Co.
Sunland Laboratories
Supplee-Wills Jones Co.
Sweet Candy Co.
Sweet Orr & Co.
Twin City Milk Producers Assn. (St. Paul)
Twitchell Champlin Co.
Tilo Roofing Co.
Toch Bros.
Trakis, James
Three Minute Cereal Co.
Union Oil Co. of Cal.
U. S. Bedding Co.
U. S. Polo Assn.

U. S. Rubber Co. (Shoes and mechanical goods division)
Utilities Securities Co., Chicago, Ill.
Val Blatz Brewing Co.
Valier Spies Milling Co.
Van Engers, Inc., Chicago, Ill.
Van Slyke, G. W. & Horton
Vibration Specialty Co.
Vulcan Spring Sew. Corp., St. Louis, Mo.
Warner Chemical Co.
Washington University, St. Louis
Webb, Thos. J., Co.
Weil-McLain Co.
Wellman Peck Co., Seattle
Western Auto Supply Co., Los Angeles, Cal.
Western Meat Co., San Francisco, Cal.
Wieland Dairy Co.
Wilbur, H. O., & Sons
Williams, O. B., & Co., Seattle, Wash.
Williams Oil-O-Matic Co.
Willys-Overland Co. (Including dealer accounts)
Wills Sainte Claire Auto Co. (Including dealer accounts)
Winters Oil Co.
Wisconsin & Michigan Transportation Co.
Wooden Cigar Box Boosters Club
Wright, A. E., Co.
Young, Chas. W., & Co.
Zinsmaster Baking Co.

EXHIBIT "B"

DIRECT ACCOUNTS

Abbots Alderney Co.
Absorbene Manufacturing Co.
Alabama Georgia Syrup Co.
Alcazar Range & Heater Co.
Allen A. Company
Amendt Milling Co.
American Chicle Co.
American Oil Co.
American Stove Co., (Quick Meal Division)
American Tobacco Co.
American Varnish Co.
Anderson, Duerlin & Varnell
Armour & Co.
Associated Exhibitors
Atkins, E. C., Co.
Atlantic Refining Co.
Atlas Dye Works
Baker Importing Co.
Beech-Nut Packing Co.
Bittersweet Products Corp.
Blackstone Mfg. Co.
Block Bros. Tobacco Co. (Paint only)
Blue Valley Creamery Co.
Bobrow Bros.
Bock-Stauffer Co.
Bond Clothing Co.
Boyce-Veeder Corp.
Bradley Knitting Co.
Backarach Co.
Burk, L., Inc.

California Prune & Apricot Assn.
Campe Corporation
Capitol City Products Co.
Carr Fastener Co.
Cheek-Neal Coffee Co.
Chelmsford Co.
Chicago, Burlington & Quincy R. R.
Chicago, North Shore & Milwaukee R. R.
City of Jacksonville
Clicquot Club Co.
Coffee Products Co.
Colgate & Co.
Commercial Poster Co.
Commonwealth Film Corp.
Commonwealth Shoe Co.
Congress Cigar Co.
Consolidated Cigar Co.
Corn Products Refining Co. (Posting only)
Cosmopolitan Productions
Coca Cola Co. (paint only)
Crane Company
Creamette Co.
Critchell, Miller, Whitney & Barbour, Inc.
Cox Gelatine Co.
Coral Gables
Cudahy Packing Co.
Daggett & Ramsdell
Deisel Wemmer Co.
Durham Duplex Razor Co.
Eline's, Inc.

Fairbanks, Douglas, Pictures Corp.
Famous Barr Co.
Felin Co., John J.
Film Booking Co.
Firestone Tire & Rubber Co.
Fisk Tire Co.
Fishback Co.
Folger, J. A. (Pacific Coast Bureau balance direct, Eastern Division)
Foreman's, Inc.
Fox Film Corp.
France Milling Co.
Frankoin Knitting Mills
Globe Automatic Sprinkler Co.
Gohamn Bros. & Kohler Co.
Golden Gate Mfg. Co.
Goodyear Tire & Rubber Co.
Grimes, David, Radio & Cameo Record Corp.
Ground Gripper Shoe Co.
Heco Envelope Co.
Hellman, Richard, Inc.
Hickey Freeman Co.
Hires, Chas. E., Co.
Hohner, M.
Hood Rubber Co.
Hormel, Geo. A., Co.
Horton Ice Cream Co.
Hotel Prince George
Hotel Sinton

Hotel Wendell
Houdaille Co.
Hudson River Day Line
Household Products, Inc.
Jackson Brewing Co.
Inspiration Pictures, Inc.
International Harvester Co.
Ionic Mills
Jayne, Dr. D., & Son
Jersey Cream Coffee Co.
Johnston, R. F., Paint Co.
Karpen, S., & Bros.
Keebler-Weyl Baking Co.
Kelly Springfield Tire Co.
Kerr Bros.
Kirk-Maher Co.
Kroehler Mfg. Co.
Krueger Brewing Co.
Kuppenheimer, B., Co.
Lambert Trublpruf Tire Co.
Lee Rubber Co.
Leggett, Francis H., & Co.
Lewis Medicine Co.
Liggett & Myers Tobacco Co.
Little Crow Milling Co.
Loose-Wiles Biscuit Co.
Lorillard, P., & Co.
Lovejoy Mfg. Co.

Lyon & Healy
Miltiades Melachrino Co.
Manhattan Rome Co.
Manhattan Soap Co.
Macy, R. H., & Co.
Mar-O-Bar Co.
Marquette Cement Co.
Marvel Paint Stores, Inc.
Maull Bros.
Memphis Baking Co.
Merrell Soule Co.
Miami Chamber of Commerce
Mickelberry's Food Products Co.
Miller Rubber Co.
Mayflower Hotel of Washington, D. C.
Morgan, Enoch Sons, Inc.
Motor Magazine
Mueller, Chas. F. & Co.
Munsingwear Corp.
National Biscuit Co.
Nebraska Clothing Co.
Nelson Mfg. Co.
Niagara Wall Paper Co.
Nichols, Anne
O'Cedar Corp.
Old Monk Olive Co.
Omaha Flour Mills Co.
Oshkosh Overalls

Oswego Candy Co.
Palmolive Co.
Panama Pacific Lines
Paris Medicine Co.
Park Pollard Co.
Paxton & Gallagher
Peabody, H. W., Co.
Price Flavoring Extract Co.
Philadelphia Electric Co.
Pierce-Arrow Motor Car Co.
Pines Winterfront Mfg. Co.
Pittsburgh Plate Glass Co.
Planert, F. W. Co.
Prescott, J. L. Co.
Principal Pictures Corp.
Proctor & Schwartz
Pure Oil Co.
Puritan Malt Extract Co.
Pyrene Mfg. Co.
Raab Bros.
R. B. Clothing Co.
Raybestos Co.
Red Top Malt Extract Co.
Red Wing Milling Co.
Reed & Barton
Renown Pictures, Inc.
Reymer Bros.
Reynolds, R. J. Tobacco

Richard Shoe Co.
Rothchild, M. L.
Royal Baking Powder Co.
Saegertown Mineral Water Co.
Scandinavia Belting Co.
Schield, Wm., Mfg. Co.
Sears Roebuck Co.
Seeley's, G. B. Sons
Stone Baking Co.
Standard Radio Corp.
Snyder's, Inc.
Southern Service Corp.
Southern Spring Bed Co.
Southern Tire & Rubber Co.
Standard Oil of Indiana (Paint only)
Stearns, Frederick B., & Co.
Stein Bloch Co.
St. Louis Independent Packing Co.
Sterling Remedies, Inc.
Street, J. D., & Co.
Stroehmann Baking Co.
Sullivan, R. G.
Sunbeam Chemical Co.
Sun Oil Co.
Sweets Co. of America
Tasty Baking Co.
Tebbetts & Garland Co.
Texas Co.

(Testimony of Frank T. Hopkins)

Thermoid Rubber Co.
Tomson, P. C., & Co.
Trommer, J. F., & Co.
Ultramarine Co.
United Autographic Reg. Co.
United States Tire Co.
U. S. Gypsum Co.
Upmann, C.
Upson Co.
Vick Chemical Co.
Vitagraph, Inc.
Waitt & Bond, Inc.
Walgreen & Co.
Waltke, Wm., Soap Co.
Ward, Montgomery Co.
Warner Bros. Pictures, Inc.
Watson, John Warren Co.
Weideman Co.
West End Brewing Co.
Whistle Co.
Williamson Candy Co.
Wrigley, Wm. J. Co.
Wurlitzer, Rudolph Co.
Wupperman, J. W.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 221 for ident later in evid. Filed 1/16 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Frank T. Hopkins)

BY MR. STERRY:

During the time that contract was in effect, the Bureau cleared most of its advertising business through the G. O. A. but not all of its business at any time. During that time, the G. O. A. had plants throughout all of the territory in which the Cusack Company had had plants previously and in considerable other territory besides. Generally speaking, the G. O. A. had plants in most of the larger cities in the Middle West and East and South. It had none on the Pacific Coast.

During the time that the Bureau business was placed through the G. O. A. we had contracts for posting in the United States, other than the Pacific Coast, where the G. O. A. didn't have plants. During that time the advertiser, or the agency placing the business, always had the designation of the plants as to whether general outdoor advertising business or the posting was to be done on the Pacific Coast and in other parts of the United States.

The Bureau has never attempted to designate the plants on which posting or paint should be done, except where the agency or the advertiser has not directed it.

That contract, Plaintiff's Exhibit 221, was terminated in the fall of 1929, I think, and shortly after that the Bureau opened an office on the Pacific Coast for the purpose of competing for business originating on the Pacific Coast with all those who might secure business, including Foster & Kleiser Company; also to render service on the accounts which we had originating on the Coast and to render service with respect to accounts which we had originating in the East and other parts of the country.

(Testimony of Frank T. Hopkins)

From 1929 on, we attempted to have a complete listing of all plants, whether they were Foster & Kleiser's or independents or Association members or not. It made no difference whatever as far as our listing of them or offering for use or using them was concerned.

Q Have you ever had any contract since 1929, or before then, or any time, with Foster & Kleiser, as to placing any business with them whatever?

A No, sir.

Q Has any business which has been cleared through the Bureau that has been put on the plant of Foster & Kleiser ever been put there except at the direction of the advertiser or the advertising agency?

A Never.

Q Is that also true of whatever business that has come through the Bureau that has been placed in competitive plants on the Pacific Coast?

A Yes, sir.

The Bureau takes its poster contracts only from advertising agencies. We do not deal direct with advertisers. We give the agencies estimates, and if these estimates become contracts or orders, we send out sublet contracts to the plants in all of the towns all over the country that have been designated in the contract or in the estimate; in the original estimate if there are any towns that have competitive plants, we submit those to the agency for a decision as to which plant they want to use. That decision is sometimes made by a representative of the advertiser or of the agency who has knowledge of the situation or possibly by the local dealer. When that is done, all the orders are sent and then we have to

go through the process of correspondence in securing the dates for posting which we desire and the distribution of the orders by the different plant owners in their town. When we have all of their acceptance in and the time comes for paper, we furnish all of the instructions to the lithographers for shipment of paper, including labels to be put on packages, and so forth. We also furnish all the necessary instructions to the plant owners in respect to the distribution of the paper.

When the bills come in we check those bills and make the payments to the plant operators.

As a matter of law, I do not believe that we guarantee the payment of the bills to the plant owner. In practical operation, we pay the plant owner whether we collect from the advertiser or agency or not. We charge a standard commission, that is, one that is generally recognized in the field of outdoor advertising, which is the usual 16-2/3 per cent commission which is allowed any source of business. The basis on which we operate at the present time is that we give the agency 13 per cent of that 16-2/3 per cent, and we operate on a gross commission of 3-2/3 per cent.

We have several member agencies on the Pacific Coast who are members of our Bureau that clear their own business direct without putting it through the Bureau. When I said that the Bureau came out here to compete with Foster & Kleiser and others for business, I meant that Foster & Kleiser are taking business either from the agencies independent of us or from the advertiser direct.

(Testimony of Frank T. Hopkins)

Q Do you know of your own knowledge of the advertising game why Foster & Kleiser Company obtained 90 per cent or 85 per cent or 95 per cent of the outdoor advertising business?

A I don't know what the percentage is. Of course, I know it is a very large proportion of all the business that goes on, on the Coast; and that is obtained very largely because of two things: First, the facilities and the reputation which they have to offer, and secondly, by their own aggressive representation of their own business to the advertisers, agencies, and others, and their own selling method, and their reputation for having good service and proper and adequate facilities throughout the Coast. Foster & Kleiser have been very aggressive over a period of a great many years, and have to a very large extent set the example for service in the outdoor advertising business for all plant owners .

I am familiar with the general run of outdoor advertising plants in the larger cities of the United States. The services of Foster & Kleiser on the Pacific Coast have the reputation of being the best of any service rendered by poster companies throughout the country. Their service compares favorably with those of any other company in the business.

Q Do you know what the reputation throughout the advertising world of Foster & Kleiser is for advertising service?

MR. GLENSOR: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Sustained. The reputation of Foster & Kleiser, except along the line attacked in this complaint, is not in issue here.

(Testimony of Frank T. Hopkins)

Mr. Sterry argued that it was permissible to show that one of the reasons why Foster & Kleiser Company got their business was because it had the reputation for the best service in the country and that it was an element to be weighed by the jury.

THE COURT: No, I don't believe you can show that by showing its general reputation. The ruling may stand.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 225.

Witness continuing: Within my knowledge over the period of the last 25 years and ever since I have been in the business, Foster & Kleiser Company has made very aggressive efforts to sell the Pacific Coast as a field for outdoor advertising. In the early days, Mr. Foster and Mr. Kleiser and other members of the company made trips to the East and visited other companies in the business. In later years these efforts have been made through the establishment of contact offices in charge of resident managers and with other employees in the cities of New York and Chicago.

In every case we give the agency and advertiser an estimate showing competitive plants where there is more than one plant in the town and where we think there is enough service to be worth listing at all, because it requires a considerable capacity in a posting plant to make it available for use by a national advertiser.

To sell to national advertisers a plant must be of sufficient capacity so that you can know that you can buy a

(Testimony of Frank T. Hopkins)

generally distributed showing along the line of what we term a standard set showing.

The standard set showing is one of the principal features adopted by the Association. It made it possible to sell the medium without the selection of individual showings on the basis of obtaining the advertiser's confidence that he would get approximately the same kind, type and value of showing that anyone else got in the same city and town. The theory of the standard set showing is an equal division of the showings among different advertisers. In a city of 250,000 to 300,000 population, such as Oakland, we would expect a plant to have at least a considerable number of what we call representative showings, sometimes called half showings. From the standpoint of the national advertiser, to be of any particular interest to us, we would certainly expect that a plant in a city of that size would have available five or six representative showings so that we would have some fair possibility of being able to get one when and if we wanted it. If a plant owner in a city of that size only had one showing and it was sold or part of it was sold, the owner would have nothing available for anybody else. A plant operator in a town of 250,000 people could not hope to attract any considerable amount of national business if he had no more than one or one and one-half representative showings and no reserve space. He might have one national advertiser and if he had his space sold continuously to that advertiser and had built it particularly for that one, it would be all right. But if he were presenting it generally, I would say that he would have practically no chance of selling it that way because there wouldn't be

enough of it to be of any interest to the advertisers generally. When we are placing orders we have to have some reasonable prospect of being able to get the space. Another factor in a small plant is that it is almost invariably sold as a selective proposition to local advertisers, and after a few selections are made, there is nothing left in the way of a standard set showing. Small plants are hardly ever sold on standard set showings.

Personally, I don't know whether any attempt has been made by Mr. King or any agency on his behalf to list the facilities of the Special Site Sign Company with the Bureau. I would have to refer to Mr. Chappelle, our Pacific Coast representative, to find that out. If a plant operator expects to get any national business there is very decidedly a necessity for him to have a uniform price which he quotes to all advertisers and all agencies alike. Unless he had such a uniform price he would certainly make everybody except the one who got the lowest price decidedly antagonistic to him, and I don't believe that even the one who got the lowest price could feel any great confidence in him.

If a plant owner adopted a policy of going directly to the advertiser and attempting to sell his service over the head of the agency, I should say that that policy would be deadly to his chances of getting national business because the great bulk of national business is handled by the agencies and if they did not handle it and did not collect a commission on it, they would naturally try to kill it; and most of them are powerful enough to kill it.

When the Bureau was first formed, the advertising agencies had not reached the same power in the field of

(Testimony of Frank T. Hopkins)

advertising that they have today. They have continued to progress right along as a factor in the placing and handling of all advertising. At the present time they place practically all of the large advertising accounts in all mediums.

Q Mr. Hopkins, I want to read to you the last elements of a hypothetical question put to Mr. King by Mr. Glensor. The preceding elements are steps about which I don't think you have testified; but Mr. King was asked to assume—"and further assume that the independent companies, including the Special Site Sign Company, had been able to obtain national accounts prior to March 13, 1931, freely, that is, in free and open competition with the Association plants owned by Foster & Kleiser franchise plants, and had also been permitted or could have participated in the business developed by the National Outdoor Advertising Bureau, through the agencies that were members of and composed that Bureau." Now, take those elements—he is asked to assume those to be true; I will ask you if there has been any time when those elements were not true?

A Never, so far as the Bureau is concerned.

Q Well, that is what I am asking you.

A Or any of the agencies.

Q Well, is there any time that that has not been true so far as any of the agencies are concerned?

A None that I know of—any one.

In my opinion, based upon my knowledge of the advertising business which I gained with the Thomas Cusack Company, the general knowledge gained from all

departments of the business with which I have been familiar, I would say that the membership which Foster & Kleiser had in 1920 and at all times since in the Poster Advertising Association and the Outdoor Advertising Association certainly had a very large, intrinsic, monetary value. I do not know of any way of fixing that value. Even though those companies do not themselves actually sell business or make contacts with business, their memberships would have an actual, monetary value because that was the operation of these associations and the things that they did and have done and continue to do that has made national outdoor advertising possible at all. The standardization, promotion of the medium by selling, the bringing together of the plant operators with other associations and advertisers' organizations, the publishing of material of promotional type, the meeting of criticism by organizations that were opposed to the medium and things of that kind, have created favor to the medium. The Poster Advertising Association has not sold outdoor advertising in the sense that it took orders and placed them with plant owners but by the activities above enumerated and others, they have been a very important element in the sale of outdoor advertising.

Q Well, do you think the membership in that association had any tendency to bring advertising business to Foster & Kleiser or to any of its other members?

A Well, I am quite sure that it has always had a tendency to bring business to members of the Association.

Q How, if there are no contracts with advertisers and agencies to give their business?

A Because of the reputation which the Association had built up for the medium, and of its members, and the

(Testimony of Frank T. Hopkins)

standards which the Association members practice, or are supposed to practice. Of course, there were some black sheep, I guess, even in the Association, and there still are. But by and large, it was known to the advertiser that there were certain standards of practice which were approved by the advertiser, and all of those were arrived at through long years of experience and through consultation with the advertisers themselves, and with agencies; and they believed that they would get the kind of service that they wanted. Perhaps the best basis for my belief of that is that I know when the Thomas Cusack Company withdrew from the Association, that it lost a lot of business. In fact, I think it was the beginning of the end of the Thomas Cusack Company.

When I say they lost a lot of business, I mean that they lost regular clients and customers that had been on the boards of the Cusack Company for many years. In practically all of the cities in which that company operated there were no competitive plants, and even some of the advertisers even sponsored the building of competitive plants under the Association banner and ruined the Thomas Cusack Company.

What I have said of membership in the Poster Association would not be true to the same extent of a membership in the paint association, the Outdoor Advertising Association. The paint business is much more complicated and involved than the handling of posting. Originally, the paint business of national character was mostly handled all the way through by one operating organization that got the contract. In its early days, the Thomas Cusack Company operated throughout the entire

United States. If it got a contract for a number of boards it sent its own paint and construction crews all over the United States, erected the boards and painted them. This was because there were no facilities at all to get the service through other plant operators. The Bureau has handled paint nationally as well as posting. The method of handling paint by one company has been out of vogue for many years. Nowadays paint contracts are sublet to the paint operators who have the facilities to operate in particular territories. Paint is usually sold as to specific locations, that is, the locations are actually selected and the paint contract is usually for a longer time than the poster contract. The unit of a poster contract is 30 days. Painted displays are usually sold for a year or longer and they are picked out according to the value of the individual location regardless of who happens to own the location.

Q Mr. Hopkins, was it of any advantage to Foster & Kleiser, in your opinion, to have a uniform service throughout the Pacific Coast?

A Well, it would seem to me it would be of very great advantage; in fact, it has been a great advantage to us in other sections of the country to have a uniform service and a high class of service throughout the Coast.

Q How has it been any advantage to you in other sections of the country?

A It has been an advantage to us in having as high a type of service as they have on the Coast to give outdoor advertising a reputation as a good medium of advertising. Many of our best advertisers, biggest advertisers, come to the Pacific Coast and they see the advertising

on the Pacific Coast and they get a favorable impression of the medium. It has been a great help to us in the national sale of the medium.

The Pacific Coast has a decided advantage over many sections of the country in that it has an open, year-round climate during which outdoor advertising can be used effectively which is not the case in a good many other sections. If there had been no uniform outdoor advertising service throughout the Pacific Coast in the last ten years and if there had been any real gaps in the large cities of the Coast, it would certainly have lowered the volume of outdoor advertising business very greatly.

Q Assume that in 1916 Foster & Kleiser Company had passed out of business, on the Pacific Coast, and no other company had taken its place to give a uniform or anywhere near similar service on the Pacific Coast and there had been simply a series of smaller and independent companies, owned by plant operators in the various cities: What effect, if any, on the volume of business done on the Pacific Coast would that have had, in your opinion?

MR. GLENSOR: Just a minute, if your Honor please. I think I will object to the question upon the ground that it is a hypothesis based upon a hypothesis; there is no foundation in fact. Purely speculative—if something had happened and if something else had happened, then what would have happened? I don't think it throws any light on the issues in this case for the witness to speculate on what might have happened if these other things had happened.

MR. STERRY: Mr. King has testified if we did not do the business, he would have had a very great volume of

business. Now, I ask further, and I want to show that in the opinion of this man, who is certainly qualified to speak, there wouldn't have been any national business on this Coast to have amounted to anything. Now, that is the purpose of the question, your Honor.

THE COURT: Objection sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 226.

Witness continuing: The trend of the outdoor advertising business generally throughout the country was very decidedly upward beginning shortly after the War, when we had a boom in business, and it continued upward through the year 1928. To my knowledge, in the year 1929 there began a very decided decline which has continued through the year 1933. There has been a slight upward trend in national advertising in 1934. The decline in the proportion of dollars spent on advertising started before the market crash of 1929, due to possibly many intangible causes. One direct cause was the competion from radio broadcasting, which still persists as a very formidable competitor, and national business has also been affected by the nation-wide depression which manifested itself in the first place by the cancellation of a great many contracts and which has since manifested itself through the fact that we have not been able to get the volume of business that we had before and by the demands of agencies and advertisers for more service for less money. I should say that the volume of business has

shrunk probably more than 50 per cent. If there is any plant in the country, large or small, which has been operated at a profit from 1930 on, I don't know of it.

To my knowledge the Bureau has dealt entirely freely with a number of the so-called independent plants on the Pacific Coast and has placed business with them. Personally I have not had any contacts with those plant owners and for first-hand information I would have to refer you to our Pacific Coast representative. As head of the Bureau, I know that there has been quite a variation in the sales policy in these so-called independent plants which has made it rather difficult for us to handle their business.

From my experience in the outdoor advertising business, I have found that in the conducting of a plant in a city of any size at all, the loss of advertising locations and leases is a perfectly necessary and continuous hazard of the business. I have operated plants which have been in competition with other plants. The necessary effect of such competition on lease rentals is that the rentals go up and the cost of leasing is increased.

Q Now, the plaintiff has testified in this case that his plant has consisted of from 100 to 300 locations, varying in point of time; that during the years he has been in business from 1916, I think, when he went in business—when I say "he", it is a corporation, and Mr. King is the sole owner—from the time of the incorporation of the business in 1916 down to 1934, or 1933, I forget which, he testified he has lost approximately 60 locations through the claimed interference of Foster & Kleiser Company, or an average of between three and four locations a year.

(Testimony of Frank T. Hopkins)

I want to ask you if in your opinion the loss of that number of locations per year, whether they be what is denominated key locations or otherwise, would have any appreciable effect upon the operation of an outdoor advertising plant?

A Well, it seems to me that that is such a small loss that it would have practically no effect.

Q If you were to undertake the operation of a plant in a city of two hundred thousand or more, would you necessarily anticipate the loss of at least that number of sites?

A I would anticipate the loss of a great many more than that from all causes. And if I were in a competitive town, I would expect it to be much higher than that.

Q You would expect it to be much higher than that from competition alone?

A Yes, sir.

I remember discussing with Mr. Kleiser the taking over of the plant here in Los Angeles and I remember the situation in reference to the plant. At that time the ordinance situation in Los Angeles was a matter of great concern to us all over the East, because our experience is that wherever there has been an adverse condition of that kind, that that information was distributed by organizations opposed to outdoor advertising all over the country and it immediately results in a great many of adverse ordinances and agitation in other cities in other states. If there had been a zoning ordinance passed in Los Angeles restricting the size of boards so that national advertising could not have been carried on, it would have had a very decided effect on the outdoor advertising business

(Testimony of Frank T. Hopkins)

throughout the country. Any condition of that kind in any place would have a decided effect, because one of the most important things in the selling of the poster medium, particularly national, is to be able to deliver the same kind and type of service in every single place that the advertiser may want it; and any single gap in that always is a detriment to the whole proposition and causes a loss of business.

One of the great difficulties originally in selling the idea of outdoor advertising to the manufacturers was the lack of uniformity in the display and it was not until the boards and the size of paper and everything had become standardized through the efforts of the Association so that the showing was approximately uniform, that we could compete with the other media.

CROSS-EXAMINATION

BY MR. GLENSOR:

Q Mr. Hopkins, if you were a plant owner in Oakland, a city of 280,000, and had about two or three thousand boards there, about Foster & Kleiser's plant, and you had a competitor of the type and character of the Special Site Sign Company with, oh, I think his maximum plant all over, everywhere, was 600 boards in the last ten years and it has been down as low as 200 and something, and you wanted to prevent that competitor from getting national business, one of the best ways that you could do so would

be to keep him moving on his locations so that he never could make up a showing, wouldn't it, a complete, full showing so he could sell national business?

A If he never had a complete, full showing, he certainly would not be likely to get any national business.

Witness continuing: To keep him from having enough locations would be one of the most effective ways of seeing to it that he never got any national business.

I think it is true that the loss of leases in the outdoor advertising business is a necessary and continuous hazard. There is bound to be a certain normal turnover due to change in ownership, buildings being erected, zoning legislation, etc.

Q Yes. Now, if, in addition to this necessary and continuous hazard of normal loss of locations, you had a competitor owning, we will say, a plant many times greater than yours, who had a corps of leasemen constantly and continuously going to see these lessors of his and making them offers sometimes for your locations and sometimes getting leases on these locations, and in other ways, various ways, disturbing your relations with your landlords, you would think that was an unnecessary hazard, wouldn't you, as a practical thing?

A I would certainly expect it if I went into and built an outdoor advertising plant where there was one already.

(Testimony of Frank T. Hopkins)

Q All these plants where you have worked, that is, with the Cusack Company, they had those conditions, did they?

A Every place I know of where there have been competitive plants there has been competition for locations.

When I said on direct examination that in the early days there was a school of thought that outdoor advertising should be sold by exclusive solicitors, I did not have in mind the official exclusive solicitors established by the Poster Association, but had reference to the direct sale to the advertiser as opposed to selling through advertising agencies. I know that the Poster Association established exclusive and official solicitors back in 1911, and that there was a change of some kind around 1911, and the number was reduced and then later on still further reduced.

I know that these official solicitors were certainly limited to the sale of the outdoor medium. That was one of the things that we undertook to convince the industry was wrong when we thought the agencies should be recognized. These official solicitors or exclusive solicitors were obliged to pay a consideration of some kind for the service which was rendered by the Association and there still is a fee paid to the Association for its service which recognized sources of business pay. I don't know whether these exclusive solicitors sold advertising exclusively for the plants of Association members. I am not qualified to testify with

respect to the actions of the Association at that time because I had nothing to do with it directly. The situation of having solicitors has continued right on down until now. I don't know that they were cut off at the time of the formation of the Bureau.

I couldn't state that the Cusack Company dominated or endeavored to control the Association along about 1918 or 1920. They owned plants in many towns which had memberships in the Association and I think they perhaps had more Association memberships than any other single company. The Cusack Company had nothing whatever to do with the organization of the Bureau and the original contract between the Bureau and the Cusack Company was not made until several years after the organization of the Bureau. After the contract was made, the Bureau cleared its business through the Cusack Company, that is to say, if we received a contract from the agency, my recollection is that ordinarily we immediately assigned the contract to the Cusack Company and in some very few instances we placed a contract with somebody else. We assigned the whole contract to the Cusack Company and they distributed it in turn to the plants on which it was to go. It made no difference whether the contract or any part of it went on the plant of the Cusack Company. That condition continued down to the formation of the G. O. A. I helped negotiate this contract introduced in evidence as Plaintiff's Exhibit 221. At the time of its execution I was employed by the Bureau as general manager. I did not

testify that the Bureau did not do any soliciting. I testified that they made no sales and that the sales were all made by the agency members of the Bureau but I think I said that one of our very particular jobs was to help the agencies in the sale of outdoor advertising. The Bureau did solicit contracts but we did not solicit them from the advertiser. We solicited them for and with the agent.

I have testified that the advertiser or the agency had the privilege of designating the plants upon which the outdoor advertising should be executed. That condition existed both under the Cusack contract with the Bureau and the G. O. A. contract with the Bureau right straight through.

Friday, January 18, 1935.

The Bureau has never attempted to divert the business from one plant to another or to change an advertiser's or an agency's decision. The Bureau did not solicit the advertiser to place business directly with us. We came in contact wtih the advertiser frequently but in company with the agency. We have no solicitors in the ordinary sense or no sales department. Our representatives work in conjunction with our member agencies' solicitors in trying to induce the advertisers. I did not state and it is not a fact that all of the more important agencies or that substantially all of the agencies were members of the Bureau. We have about 200 members which includes a lot of the more important ones.

(Testimony of Frank T. Hopkins)

The Bureau collected and maintained information as to various outdoor advertising plants of the country. As part of the service which we gave our members without further cost, we would give information about any outdoor advertising situation in any particular town to any member agency inquiring for the information. We would also give the information to a non-Bureau agency, as a matter of courtesy. The Poster Advertising Association has compiled data of that kind for a good many years and they have allowed agencies or sources of business to subscribe to that service. The Bureau subscribed for the service and it was available to our members as part of our service. There was a charge for the service but I don't believe we ever paid as much as $3,000 a year for the service. I believe the Association today furnishes any information they can get whether it refers to Association plants or not, but in the past and until very recently, I think it referred only to Association plants. An advertising agency becomes a member of the Bureau by reason of a stock option agreement. Without reading this entire paper over which you hand me, I think it is an exact copy of our option as it existed up to the time of the so-called Mack decree, the consent decree.

A typewritten copy of the document identified by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 222 in evidence, and is in words and figures as follows:

(Testimony of Frank T. Hopkins)

[Plaintiff's Exhibit No. 222.]

EXHIBIT "B"

OPTION TO PURCHASE STOCK OF NATIONAL OUTDOOR ADVERTISING BUREAU, INC.

WHEREAS, THE NATIONAL ADVERTISING BUREAU, INC., hereinafter called the Bureau, is a corporation organized for the promotion of Outdoor Advertising; and

WHEREAS, the Bureau has a contract with General Outdoor Advertising Co., Inc., dated August 24, 1925, which is effective until notice of cancellation by either party be given and for five years from the close of the year in which such notice is given; and

WHEREAS, the Bureau has most advantageous facilities for the placing of outdoor advertising throughout the United States through the said contract with General Outdoor Advertising Co., Inc., and otherwise; and

WHEREAS, it is the policy of the Bureau to transact business only for those advertising agencies of approved standing, which have become qualified as members of the Bureau by payment of an initiation fee and by purchase of an option upon some amount of the Bureau's capital stock and otherwise complying with the Bureau's terms, and

WHEREAS, hereinafter called the grantee, desires so to qualify and become a member of the Bureau;

W, THEREFORE, GEORGE C. SHERMAN, FREDERICK J. ROSS, AND WILLIAM D. Mc-

JUNKIN, who are trustees for the Bureau and those purchasing options upon the capital stock of the Bureau, hereby grant to the grantee an option to purchase at any time at and after the date of the expiration of said contract between the Bureau and General Outdoor Advertising Co., Inc., aforementioned, One share of said stock at the price of $100 upon the following terms and conditions:

First. That the grantee shall, within fifteen days from the date hereof, pay to said trustees as the price of this option the sum of One hundred dollars and shall return to said trustees a duplicate hereof duly signed by the grantee.

Second. That, as the share covered by this option is subject to assessment by the Bureau during the life of this option to an amount not exceeding $100 in any calendar year, the grantee agrees to pay to the Bureau the amount of any such assessment and/or assessments, if any, when and as the same may be made.

Third. During the life of this option, the trustees will, upon request from the grantee, give a stock proxy on the share hereby covered at any time and from time to time, and will pay or cause to be paid to the grantee all dividends which may be paid thereon, or a sum equivalent thereto.

Fourth. During the life of this option the grantee covenants and agrees that the Bureau shall be the grantee's sole agent for the placing of outdoor advertising and shall collect and receive for its services and expenses of every nature that percentage of the commis-

(Testimony of Frank T. Hopkins)

sions which may be paid on account of such advertising as is currently charged to all its other members.

Fifth. This option is personal to the grantee and is not transferable, nor can any rights or privileges under it, or of membership in the Bureau, be transferred.

Sixth. It is agreed that any breach of any of the

2.

terms hereof by the grantee or any act or conduct of the grantee which shall or may be prejudicial to the interests of the Bureau, may cause the suspension of expulsion of the grantee from membership in the Bureau and the forfeiture of all the rights and privileges of membership, as well as the forfeiture and cancellation of this option, and the forfeiture of the moneys paid therefor.

Seventh. If any complaint be made by the Bureau or any of its officers, agents, or members of any breach of the terms hereof or of any act or conduct prejudicial to it by the grantee, the trustees shall notify the grantee thereof, giving reasonable time and opportunity for the latter to reply. After hearing the complainant and the grantee and any evidence pertaining to the facts which may be offered the Trustees, it is hereby covenanted and agreed by the Bureau and the grantee that the Trustees shall act as arbitrators and, as such, shall determine the issues and define the penalty, both the Bureau and the grantee hereby agreeing to be bound by their decision.

Eighth. The Bureau consents to execution of this option upon the terms stated, will deliver a certificate of its capital stock to the trustees to be held by them against

said option upon receipt from them of payment therefor in the sum of $100 and will, itself, be bound by such of the terms of this agreement as are pertinent to it.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this day of ————, 192—.

NATIONAL OUTDOOR ADVERTISING BUREAU, INC.,

By ———— ————, President.

Agency ———— ————,

By ———— ————.

3.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 222 in evid Filed 1/18 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Q Now, I call your attention to the fourth paragraph of the agreement just read, making the Bureau the sole agent of the agencies in placing outdoor advertising. In the practical operation under that contract, that was exactly what you were, wasn't it; you were their sole agent placing the outdoor advertising developed by them?

A That is what we hoped to be. In practical operation it never worked that way.

Q Never worked that way; they broke over?

A Oh, yes.

(Testimony of Frank T. Hopkins)

Q Did you try any of them under that clause?

A Never.

Q Never tried any of them. Did you discipline any of them?

A Never.

Q Now, I believe you stated yesterday—and again let me be sure I get this right—that under this contract with the G. O. A., Exhibit 221, you assigned almost all of these contracts developed by your agencies to the G. O. A.?

A Yes, sir.

Q And then they placed the advertising on their plant or on other plants?

A Yes, sir.

Q And that was called for thereby. As a matter of fact, they placed it only on Association plants, didn't they, Mr. Hopkins, speaking now of all times prior to the Mack decree in 1929?

A Oh, I think they placed it on any plants that would accept it and upon which the advertiser wanted it, of course.

There was no arrangement or understanding of any kind by which the G. O. A. would not place business on any plant whether competitive or not. In the general operation of the placing of business at times up to the time when the General Outdoor Company was actually a soliciting force, any so-called independent plant operators ordinarily would not take business from the General Outdoor Advertising Company; in other words, it was a straight out and out competitive situation. We placed some business direct with other plants, and the General Outdoor Company placed with any of our plants wherever they could.

(Testimony of Frank T. Hopkins)

I cannot quote any specific instances where the G. O. A. placed any business on other than Association plants if Association plants were available. My best recollection is that they placed business on both. Under this arrangement and prior to the Mack decree, the General Outdoor Advertising Company cleared a very large percentage of all the national advertising in the United States. It may have been 80 per cent, but I would not state that the G. O. A. controlled 80 per cent of the national advertising in the United States.

Referring to paragraph 6 of Plaintiff's Exhibit 221, that being the paragraph wherein the G. O. A. agrees to refrain from the solicitation of any advertisers shown in Exhibit A attached to said contract and wherein the Bureau agrees to refrain from soliciting from the advertisers shown in the schedule marked Exhibit B and attached to said contract, it is a fact that prior to the execution of the contract the Bureau had been soliciting the accounts of all these advertisers. I said that we did not solicit accounts but only solicited agencies. That is true. Our agencies solicited any accounts that they thought they could get. As an organization, we did not solicit business direct from any advertiser at any time. This paragraph of the contract refers to the soliciting of the G. O. A. and of the Bureau. We were violently competitive. They were soliciting business direct from the advertisers and we were soliciting it from the agencies, and in the drawing of this we tried to protect ourselves as best we could so that we would have a fair opportunity to solicit through the agencies. At the time the contract was executed, we were supposed to stick to our list of accounts and the

(Testimony of Frank T. Hopkins)

G. O. A. were supposed to stick to theirs and there was to be no competitive solicitation between us, the G. O. A. and the agencies, as to the list of advertisers annexed to that contract and marked Exhibits A and B, but if you could see that list of advertisers after a year or two, you would know that there was a lot of competitive solicitation. Practically every one of them changed from one side to the other and neither side kept that portion of the contract.

REDIRECT EXAMINATION

BY MR. STERRY:

Q Mr. Hopkins, you said yesterday that during the time of your contract with the Thomas Cusack Company, when your Bureau sent out a contract for outdoor advertising, that that contract was assigned outright to the Thomas Cusack Company; if that is so, how could the agency or the advertiser direct the posting of its paper on a plant in territory where Cusack did not have a plant?

A We would specify in advance the plants on which the order was to be placed. That was a part of the contract.

At one time we got out a price rating data booklet for the use of our member agencies, and tried to give them complete information with respect to plants and towns in all parts of the country. This document is a copy of one of them. I think it is the last one we got out in that form. It is dated June 1, 1930. We have not issued a book of just that type since then because we have changed the method of sending out information. We sent this one out to all of our agencies. We have the plants and towns listed by states. This listing, of course, gives only the

names of showings and does not purport to be completely descriptive of plants. Among the independent plants listed in California, I see the Yonge-Elliott Company listed under Anaheim, Fullerton and Santa Ana with Foster & Kleiser. Orange shows the same two. San Diego shows Foster & Kleiser Company and the Robert Cordtz Company. In Oregon, under Portland, the C. E. Stevens Company is listed and Salem also has the Stevens Company listed there. The C. E. Stevens Company is also mentioned under Seattle, and in Spokane we have the Hayward-Larkin Company and the U. S. Sign Company. Under Tacoma, the C. E. Stevens Company and Foster & Kleiser are listed. This list only covers towns of 5,000 population and over and is not intended to be complete. The Special Site Sign Company is not listed there. There is no specific mention of any plant under Oakland. Where there were competitive plants we did not list the name of the plant. This booklet was merely to give a rough idea to the agencies of the cost of outdoor advertising in these cities and towns, for them to use for quick reference. Where there were two prices, that is, where there were competitive plants, we quoted both prices according to the best information we had. There was no other information in that book. We supplied other information on request from our members. The Special Site Sign Company was not shown or listed in Oakland because we had no information on which to list them. That is the only copy of the book that I could find and I would like to keep it as part of my records.

The booklet was thereupon marked Defendants' Exhibit ZZZ for Identification.

(Testimony of Frank T. Hopkins)

Witness continuing: We have placed some business with both so-called independent and Association plants without receiving any commission therefor. We have listed approximately 1800 non-Association plants in our rate pages. All of them are treated just exactly the same as the Association plants as far as we are concerned. The Poster Association has furnished information to non-Association plants only since Outdoor Advertising, Inc. was formed. Outdoor Advertising, Inc. is an association purely for the sale of the medium, of outdoor advertising. As I understand it and as my experience has been, it sells the medium without reference to particular plants at all. The words "approved agencies", as used in the option agreement, were those agencies whose credit and standing we had approved as being worthy of placing business for and worthy of risk. My recollection is that the word "approved", as used in that agreement, referred to our approval of the agency.

Q Now, may I ask you a question: The so-called G. O. A. decree has been admitted in evidence, and has not yet been read; it may or may not be, during the course of the trial; and it appears, I think sufficiently, that it was entered by consent of all the parties. I want to ask you this question: Did you before the institution of that suit offer to the government the consent to exactly that decree before any action was ever brought so far as it affects the Bureau?

A I certainly did, sir. We were anxious for the decree, and we negotiated the consent decree as it is there.

Witness continuing: The Bureau never handles any advertising detrimental to the medium, such as sniping,

target signs, rag signs, indiscriminate small signs, 4 by 6 signs, which are so-called targets. It is poor advertising for both the advertiser and for the medium.

There is certainly no way that I know of by which a valuation can be placed upon any so-called advertising lease because of the great number of indefinite things that must be taken into consideration, all of which are guess-work. In the first place, the lease is taken with the hope that you may sell advertising upon it and the lease in almost all cases is conditioned upon the sale or improvement or change in ownership of the property, and there are so many indefinite things in it that there is no way of figuring a definite value except by guess-work. I am not referring to a ground lease that an advertiser might take and use for advertising purposes, but am speaking of the ordinary advertising lease.

RECROSS EXAMINATION

BY MR. GLENSOR:

I said in response to one of Mr. Sterry's questions that I treated the independent and Association plants the same and made no distinction between Association and independent plants, so far as the Bureau is concerned. That is true at the present time and it has been true during the whole life of the Bureau, or my connection with it.

A small sign is objectionable because of the way small signs are usually handled and because it is not up to the standard that has been adopted by the Association or by other plants that operate in the regular type of displays even though they may not be Association members. I have seen boards which might be termed miniature de luxe bulletins. I think some of them are objectionable and

(Testimony of Frank T. Hopkins)

some are not. Mere size in itself does not determine whether a sign is objectionable. It is possible that a small sign can be just as attractive and just as well placed as a big one.

I have no idea how Foster & Kleiser figured the value of their locations or leaseholds. Assuming that they had 15,000 leaseholds which they valued at $6,198,934, the average value of the individual leasehold would be about $400.

Q Well, does that outrage your sense of values with respect to leaseholds?

A Well, my answer to the question, as I understood it, was in respect to a leasehold. I would certainly have some different answer as to a very large group of leases throughout a territory which might, because of their very number and distribution, constitute some value of some kind—certainly a large value—just on the same principle that a life insurance company can figure rather accurately on the prospect of life for a very large group of people, but they certainly can't figure on one.

Q Your opinion, if I understand you correctly, is that there is no known method of valuing a single leasehold, but if you have enough of them you can arrive at a value, is that so?

A Some intangible good will value.

This contract between the Bureau and the G. O. A., Plaintiff's Exhibit 221, is no longer in effect. We asked permission to cancel it and got permission through the Mack decree of May 7, 1929. We went to trial in that case and we tried it for a couple of weeks before we consented to the Mack decree. I do not know that we induced

(Testimony of Frank T. Hopkins)

our co-defendants to consent that the decree be entered. We tried very hard not to go to trial at all and, as far as we were concerned, there was no evidence of any kind presented by the Government in respect to unfair methods or anything of that kind. We finally consented to a decree which directed us to cancel this contract and it was cancelled at some later date set by the decree.

REDIRECT EXAMINATION

BY MR. STERRY:

When I stated on direct examination that as far as the Bureau was concerned, we offered the same thing to the Government before trial. Our offer included the cancellation of the contract between the G. O. A. and ourselves and the cancellation of any supposed agreement that we had with our agencies.

Q BY THE COURT: Was the consent of the Government necessary to the cancellation of this decree?

MR. GLENSOR: That contract, your Honor?

Q BY THE COURT: That contract? It was a private contract, wasn't it?

A But the consent of the Government was necessary in order to settle the questions at issue among all parties that were not willing to cancel the contract.

We were willing to cancel the contract before the suit was brought but we couldn't do it without five years' notice and we were afraid of the five years, that is, we were afraid we could not secure the consent of the party to it.

(Testimony of J. D. Chappell)

Thereupon

J. D. CHAPPELL

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I am employed by the National Outdoor Advertising Bureau and have been so employed for approximately eight years. I came out here in 1929 as Pacific Coast Manager of the Bureau and I hold that position now. The Pacific Coast office of the Bureau is in San Francisco. The Bureau opened its office on the Coast primarily to protect its interests and to secure business from our agency members who might place business with Foster & Kleiser and direct with other direct solicitors.

Q What difference would it make to the Bureau if your Pacific Coast members should place their business with Foster & Kleiser?

A Well, it would take the revenue away from the Bureau, from the support of the Bureau or the organization as a whole. It would not make it possible for us to maintain offices and facilities on the Coast except at considerable additional expense, for the benefit of our Coast members and for the benefit of rendering service on business emanating in the East.

Q All right. Then, as I understand it, your purpose in opening an office was, first, to obtain business for the Bureau; then, to render service to your members on the Pacific Coast and also be able to give full information about the Pacific Coast to your Chicago and New York offices?

(Testimony of J. D. Chappell)

A That is right.

Q Now, who designates the plants upon which the advertising display is to be made that is provided for in these contracts?

A The advertising agency.

Q Does the Bureau ever designate it?

A Never.

Q When I say "Bureau" remember I am limiting it purely to your office.

A Yes, sir.

We make up the contracts and our estimates attached to our contracts show the plants. If there are competitive plants in the towns that we have listed, both plants are shown together with the price. If a contract comes to us with a schedule attached, including a town where there are competitive plants, if no plant is specified for that town the contract is returned to the agency and we demand from them their choice of plants. We do not accept that responsibility. It makes no difference whatever to the Bureau whether the advertising is put upon a Foster & Kleiser plant or a competitive plant if we receive the usual 16-2/3 per cent gross commission from both the Association and non-Association plants. Since I have been here we have placed business upon various so-called competitive plants or independent plants as well as Foster & Kleiser. By far the greater bulk of business which has passed through our office has been placed on the plants of Foster & Kleiser. That is because the advertising agencies and the advertisers have an idea that they can get the best service from them and that the most facilities are provided by that company. As a matter of fact, however, one of the things that we are trying to sell some of our agency

(Testimony of J. D. Chappell)

members is that Foster & Kleiser need supervision as well as any other plant. The sales effort of Foster & Kleiser to them has been such that a good many of our own members feel that the Bureau is unnecessary and that all they would have to do is to put a contract with Foster & Kleiser. That is one of the reasons that we are in competition with them. In our office we have never made any effort to divert business either to or from an independent plant, or either to or from Foster & Kleiser.

Q Have you ever been accused of it by both Foster & Kleiser and the independents?

A Well, I don't know that we have been directly accused of it, but when one plant operator gets business and the other does not, why, they look at us and ask us, "How come?" and vice versa.

I am somewhat acquainted with the Special Site Sign Company plant in Oakland. In my opinion that plant has never had sufficient capacity to attract any great amount of so-called Pacific Coast national business, at least they didn't have the capacity at the time our field service department made a complete inspection. We have never listed Special Site and its facilities in making up our estimates. On one or two occasions, however, we have been requested to make a report regarding the facilities of the Special Site Sign Company. We have made such a report when we had those requests.

Q And have you ever had any experience of why you had a report from the Special Site Sign Company in response to your requests for their facilities, that inspections have shown were not correct?

A I don't get the question quite.

(Testimony of J. D. Chappell)

Q I say, have you ever had a statement from the Special Site or a report, whatever you call it, showing what they could offer, that on inspection of your field service has shown that they have not the facilities that they reported?

MR. GLENSOR: Now, just a minute, if your Honor please. I have not objected on the ground of hearsay up to now. I have let it all in. But now we are right down to a direct attack on a concrete question of fact of the plant and facilities of the Special Site Sign Company and on the accuracy of the reports that they have made. And I object to the question upon the ground that it calls for patent hearsay; and I insist that if this is to be proved, that it be proved by showing, first, what the report was that was made by the Special Site Sign Company; and then, that the report was false by the men who determined to their own knowledge that it was false, and not through hearsay reports that were made to this witness.

THE COURT: Objection sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 227.

Witness continuing: On one occasion I have had correspondence with Mr. King with relation to his charging different prices for exactly the same proffered service to the different agencies. I wrote Mr. King the original of this letter dated January 18, 1933.

The letter referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-6 in evidence, and is in words and figures as follows, to-wit:

(Testimony of J. D. Chappell)

[Defendant's Exhibit No. AAA-6.]

January 16, 1933

Mr. Charles H. King
General Manager
Special Site Sign Co.
Oakland, California

Dear Mr. King:

We have just been informed that quite recently you have had occasion to negotiate with several independent plant operators in the interest of an advertising agency and in these negotiations you have asked the plant operators to accept posting on a selective basis regardless of the number of units to be purchased.

Inasmuch as you have requested that business be accepted on the basis that you suggest, we assume that the terms are quite satisfactory to you, although upon referring to your letter to us of January 17th the prices quoted us are considerably more than what we understand to be the basis of your negotiations in connection with the above matter.

Furthermore, you advise that the rates quoted to us are subject to 16-2/3% commission whereas the agency commission on the above proposition, we understand to be 20%.

(Testimony of J. D. Chappell)

Frankly, Mr. King, we cannot understand why you would be willing to accept a contract for posting on a selective basis regardless of the number of units purchased and give an agency with whom you plan to deal direct any advantage over business from an agency through the Bureau. Consequently, we hesitate to give the agency that has made the inquiry regarding your plant the rates which you have quoted to us knowing that you apparently are willing to accept business at a very much lower rate.

Please let us hear from you promptly about this so that we may know how to answer the inquiry which we have from one of our agency members.

2–Mr King

Jan. 18, 1933

There are a number of angles to this whole situation and it may be to your best interests as well as our own to discuss this situation with me at your earliest opportunity.

If you expect to be in San Francisco Thursday or Friday, I would appreciate your dropping in to see me.

Very truly yours,

JDC/mh

J. D. CHAPPELL
Pacific Coast Manager

No. 5673-C *Foster & Kleiser vs Special Site* Deft Exhibit No. AAA-6 Filed 1/18 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of J. D. Chappell)

Said exhibit was thereupon read to the jury.

Witness continuing: After I wrote that letter, Mr. King called as I suggested, and I believe Mr. Westbrook was with him; I do not recall definitely. In that conversation, I don't know that I referred specifically to his giving different prices or commissions to different agencies. I myself had no interest in the commission that he paid or the rate that he charged. As I recall, I explained to Mr. King that it made no difference to us what rate he charged as long as he made the same rate to us that he made to others; and that was all. I just wanted to be sure that we were getting the same proposition that everyone else was getting. We never ask for any more but we expect as much.

When I first came to the Coast with Mr. Gilhofer we made a courtesy call on Mr. LaFon, and Mr. Stevens was present. Our conversation was general but, of course, in connection with outdoor advertising and the Bureau. Mr. Gilholter told Mr. LaFon and Mr. Stevens that the Bureau would always be glad to place business with them whenever their plant was specified.

Q Did he say anything as to whether the Bureau did or did not try to influence the plants to which business was to be placed?

A That point was not mentioned.

(Testimony of J. D. Chappell)

CROSS EXAMINATION

BY MR. GLENSOR:

Prior to coming out here I had worked for the Bureau in the East. The Bureau had never had an office out here until 1929. We opened the office here because just at that time we had to depend upon our own facilities for the actual placing of the business. Prior to that time we had placed our business through the General Outdoor, and before that through the Cusack Company. Their representatives more or less represented us. Our contract with the G. O. A. was cancelled pursuant to the consent decree and that changed the operation of our business. I would have no way of knowing what proportion of our Coast business has been placed on independent plants as distinguished from Association plants since 1929.

Q Well, how much that has cleared through your office has been placed on independents as compared to Association plants?

A All of the business that has been specified by the agency.

Q Well, usually how much has been specified by the agency?

A I wouldn't know that without referring to my records.

Q Mr. King and Mr. Westbrook called upon you several times, did they not, about the Special Site Sign Company's plant?

A I remember only one call from Mr. King.

Witness continuing: The list of locations given to us by a plant owner is called a location list. We received location lists from the Special Site only on one or two occasions when we requested them.

(Testimony of Harry R. Leonard)

REDIRECT EXAMINATION

BY MR. STERRY:

When advertisers have requested information of the Special Site Sign Company, we have in turn requested their locations, and whenever an agency has asked for an inspection of that plant, we have followed that request and have sent our report to the agency, together with whatever information or material has been given to us by the plant operator.

Thereupon

HARRY R. LEONARD

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have been connected with Foster & Kleiser Company since October, 1923, when I entered their employ as a leaseman. In May, 1925, I became plant superintendent, which position I now hold. When I started work in 1925 there was considerable activity in the real estate market in Los Angeles and business was moving very rapidly at the time, so it was necessary to move from one location to another location, that is, we were losing locations and moving panels from one to another. In addition we were building new panels and increasing our plant. We continued to increase the size of our plant until the latter part

of 1927. In 1925 we were moving two hundred panels a month, or about 5000 lineal feet of plant a month. From 1925 until 1927 the average would be about 75 panels a month that we were losing and changing locations, and 125 or more a month that we were building new.

When I was a leaseman in Los Angeles, I worked under Mr. Westbrook, but I never heard him say in substance or effect, during my attendance at leasemen's meetings, or elsewhere, that it was the policy of the company to break competitors' leases or to move competitors or to crush them in the shell, or anything to that effect at all.

Thereupon

GUY S. QUIGLEY

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have been employed by Foster & Kleiser since December 22, 1922, and at the present time I am Chief Clerk of the Lease Department. I entered the employ of Foster & Kleiser as a leaseman and remained such until 1923, at which time I handled various work and correspondence coming in requesting takedowns, that is, letters requesting takedowns for the reason that the property had changed ownership, or the owner wanted to build.

I have heard Mr. Leonard's testimony as to the approximate number of locations that were being lost and new ones being built. My estimate would be approximately the same over approximately the period he gave.

(Testimony of Alvah H. Ross)

Thereupon

ALVAH W. ROSS

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I reside in the City of Los Angeles and am in the real estate business and have been since 1900. I have no connection whatever with Foster & Keliser Company and have no interest in the result or outcome of this lawsuit. I have been interested both as owner or agent in properties on Wilshire Boulevard, especially west of La Brea in the district known as the Miracle Mile. Either personally or through my assistant, Mr. Lawson, I leased a number of vacant pieces of property in that Miracle Mile to Foster & Kleiser for advertising space. I think there were two or three blocks of property. Before that, La Fon had been occupying these sites from month to month. I terminated his occupancy, I imagine somewhere around 1929 or 1930. Before doing that I had had a great deal of discussion with LaFon about the class of structures which I wanted on that property. I didn't think he had good enough signs for Wilshire Boulevard and I wanted him to put on de luxe signs but I could never get him to agree to do that. LaFon had rather mediocre signs on the property and we were trying to develop a high-class district and thought his signs were detrimental to the locality and the boulevard.

(Testimony of Alvah H. Ross)

Q What was the final cause of your terminating his occupancy?

A Well, we had been thinking about it for some time, but he put up a couple of boards there advertising Hollywood Boulevard as the fashion center of the world, or something to that effect; and that was our main competitor at that time. So the property owners out there greatly resented that, and bawled me out for permitting anyone to have signs there that would put up those kind of advertisements. So I immediately notified him to remove all his boards.

Q Before that had anybody but Foster & Kleiser contacted you at all for those locations?

A Nobody from Foster & Kleiser had ever talked to me.

Q And after you notified Mr. LaFon to take his boards down, did you direct anybody in your organization to contact Foster & Kleiser and see if they could make a lease of those?

A Yes, I had Mr. Lawson talk to them.

CROSS-EXAMINATION

BY MR. GLENSOR:

I had a few other locations on Wilshire besides the two or three blocks of which I spoke; they were between La Brea and the city limits.

Q I see. You knew, of course, that Foster & Kleiser had a great many advertising locations on Wilshire between La Brea and the city limits, did you not?

A They didn't have a great many.

(Testimony of Howard B. Lawson)

Q You know that, do you? You knew that they did not have a great many locations between La Brea and the city limits?

A Yes, sir.

I think we were getting probably $50 or $75 a month for a half block in the various locations. We probably got about double that from Foster & Kleiser.

Q Do you know how he knew that Foster & Kleiser were in the market for the property?

A Well, he didn't know they were in the market for the property. He had contacted Foster & Kleiser several months before that, trying to sell them on the idea of taking these locations, because we were dissatisfied with the boards that were there at the time, but he didn't have any success in making a deal or we would probably have put La Fon off of there before.

Q I see.

A Because we didn't like his boards.

Thereupon

HOWARD B. LAWSON

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I live in Los Angeles and am in the real estate business for myself under the name of Howard B. Lawson Company.

I have no connection with Foster & Kleiser Company and have no interest in the result or outcome of this law-

suit. In 1928 and 1929 I was connected with the preceding witness, Mr. Ross, as a salesman. I negotiated with Foster & Kleiser for the renting of five pieces of property on Wilshire Boulevard.

One of the factors and one of the considerations in the deal with Foster & Kleiser was that the leases should contain a provision that the structures to be erected on these locations should be de luxe bulletins. We negotiated these deals on our own initiative. I solicited Foster & Kleiser. Mr. La Fon maintained poster panels on these locations and he had no landscaped boards at all. We were trying to develop that section known as the Miracle Mile, which was about the poorest section on the boulevard at the time. Everybody was knocking it and our greatest competition came from Hollywood. The Hollywood merchants advertised on our billboards and we resented that very much. Mr. Ross asked Mr. La Fon to take the advertising of the Hollywood Boulevard off the boards on Wilshire, and it was not taken off, and furthermore we thought that if we had some nice billboards like Foster & Kleiser had it would clean up the district and make it look much better. As a result I went to Foster & Kleiser. After negotiating for several months, we finally made a deal for an aggregate rental of $800 a month for five locations.

I remember the incident of Mr. Ross' notifying Mr. La Fon to remove his boards, but I don't remember the date. Prior to that incident, no one from Foster & Kleiser had ever come to me in connection with the renting of those pieces.

(Testimony of William M. Culliton)

Thereupon

WILLIAM M. CULLITON

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I formerly worked for Foster & Kleiser Company, but I am no longer connected with them in any way. I own about $200 worth of stock in that company. I worked for Foster & Kleiser Company from the latter part of 1926 until November, 1929 in the Seattle Branch.

I know C. E. Stevens of Seattle and have known him since about 1927. I know a man named Jack David, a director in the Stevens Company, and have known him since about 1924. I had a conversation with Mr. Stevens concerning the sale of the assets of the C. E. Stevens Company to Foster & Kleiser Company. I do not remember the exact language, but I do remember the substance of it. For some time prior to the summer of 1929 Mr. Stevens and Mr. David had been endeavoring to get me to invest a certain sum of money in the C. E. Stevens Company ,in return for which I was to get a job, and so on. I finally told them that I was not interested in investing any money in their company, and Mr. David and Mr. Stevens, one afternoon in Mr. David's office, suggested that I negotiate a deal whereby the Foster & Kleiser Company would buy out the C. E. Stevens Company. I asked Mr. Stevens at that time why Mr. Stevens did not go to Mr. O'Neil, the general manager; and he

said that he did not want to talk to Mr. O'Neil, and he told me that there would be a chance for me to make a commission by selling the C. E. Stevens Company to the Foster & Kleiser Company. So in August of this same year I had occasion to go to Arizona; before I left I had an interview with Mr. David and Mr. Stevens, and they suggested that I get hold of Mr. Lausen when I came down to San Francisco, and put the proposition up to him, and that if the Foster & Kleiser Company were interested in purchasing the plant, that Mr. Stevens would come immediately to San Francisco. So I came to Arizona by way of San Francisco around the 15th of August, 1929. At that time I stopped at Mr. Lausen's office and told him that the C. E. Stevens Company wanted to sell their plant to the Foster & Kleiser Company, and also told him of my conversation with Mr. Stevens, which I have already related. Mr. Lausen told me that Mr. Kleiser would be in Seattle in three or four weeks and suggested that I call Mr. Stevens and tell him that if he were interested in selling the plant to see Mr. Kleiser. I called Mr. Stevens from Mr. Lausen's office and told him that I was calling from Mr. Lausen's office and that Mr. Kleiser would be in Seattle in three or four weeks and that I would be back at that time, and that Mr. Lausen had suggested that Mr. Stevens see Mr. Kleiser if he wanted to sell his plant. As I recall, Mr. Stevens said all right, and that was all there was to it. I subsequently returned to Seattle before Mr. Kleiser reached there from the East. I don't recall definitely whether or not I told Mr. Stevens that Mr. Kleiser was in Seattle, but I imagine that I called Stevens and

(Testimony of William M. Culliton)

told him. Prior to the conversations with Stevens about the sale of the Stevens plant, I had had a number of conversations with Mr. David along the same line. Mr. David would always tell me he couldn't understand why Foster & Kleiser wouldn't buy out the C. E. Stvens Company. At one time, a good many years ago, Mr. David made the remark that the C. E. Stevens Company was formed for the purpose of irritating Foster & Kleiser Company to such an extent that Foster & Kleiser would finally buy out their property.

CROSS EXAMINATION

BY MR. GLENSOR:

When I was in the lease department of Foster & Kleiser I negotiated leases and I did not do anything else. I don't recall having a conversation with Mr. Stevens about certain alleged activities of mine in tearing down independent signs for Foster & Kleiser Company. I never discussed that with him at all and I never tore down any signs for Foster & Kleiser.

I don't recall whether Mr. David or Mr. Stevens suggested that I get hold of Mr. Lausen at that conversation in Mr. David's office. I believe I discussed with Mr. David the matter of the prospective sale once or twice prior to my discussing it with Stevns. I certainly did not discuss the sale of the C. E. Stevens plant with David at the request of any one connected with the Foster & Kleiser Company. It all came to me from Mr. David and Mr. Stevens. Those one or two conversations about the purchase of the plant prior to Stevens coming in were initiated more or less spontaneously by Mr. David and

not by myself. In the conversation in Mr. David's office, Stevens and David made it clear to me that they wanted me to use my offices to get them together with Foster & Kleiser for a proposed sale of the Stevens plant. It was clear to me that Stevens wanted to sell.

Thereupon

EDMUND D. YOUNG

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am employed by Foster & Kleiser Company as Assistant Manager of the Los Angeles Branch, and have held that position since January 1, 1924. I have worked for Foster & Kleiser Company since October 1, 1920, when I entered their employ in the San Francisco Branch. For a year and a half there in San Francisco I was Lease Manager of that Branch.

I know what the policies of the Foster & Kleiser Company with respect to leasing were while I was leaseman and lease manager at San Francisco. Generally and briefly, the policies were to lease all of the choice locations that we required for the operation of our business. It was not our policy to lease out locations from under competitors. While I was lease manager we had meetings of the staff of the lease department. They were informal discussions and we held them very seldom. Generally all of the leasemen were present at those discussions.

Testimony of Edmund D. Young)

Q Did you ever give the leasemen, either in any of those discussions or individually, Mr. Young, instructions or suggestions to the effect that they should lease all the property of every competitor or of any competitor?

A No, sir.

Q Did you ever give those leasemen either in those meetings or elsewhere, or individual instructions, to the effect that it was the policy of the company, or that they should, lease out locations from under competitors?

A I certainly did not.

Q Did you ever instruct or did you ever state to the leasemen at San Francisco or even at Los Angeles that the success with which they leased locations out from under competitors had a direct bearing on their advancement with the company?

A I certainly did not.

I recall that the Special Site Sign Company was in business around San Francisco Bay while I was lease manager at San Francisco. There may have been one or two instances when we came into competition with that company for advertising locations, but not in the city. The Special Site Sign Company had no locations in the City of San Francisco that I can remember. They had a small number of highway structures on highways adjacent to San Francisco. As an estimate, I would say they may have had ten structures in the territory I was responsible for.

The policy of Foster & Kleiser was to lease all locations that were available in the Triangle district because there was never a time when we could lease more than we could use. It was the district which was subsequently

called the extra tight district, or part of the tight district, and which is now called the first traffic area.

I never had a conversation with Mr. Westbrook about membership in or a franchise in the Poster Advertising Association that I recall. I may possibly have made an attempt to explain to Mr. Westbrook what the membership or franchise in the Poster Advertising Association meant, but I couldn't have made a very clear explanation of it because I didn't understand it myself. I have no recollection of any such conversation with Mr. Westbrook but it is possible that I did.

When I became assistant branch manager of the Los Angeles branch on January 1, 1924, there was a very great demand for outdoor advertising locations. First of all, there had been a wide influx of people into Los Angeles, just about doubling its population, and I recall that the year before the building permits here were second to New York and had exceeded Chicago's. As a result of the influx of population and the building activities, it became necessary to remove large numbers of our structures. We were taking down approximately 7,000 feet of plant a month during the summer of 1923 to make way for building developments. In addition to that situation, our own business was on the upgrade and contracts for the display of outdoor advertising were coming in. To meet this situation, the general office had laid out a large building program which called for approximately doubling the plant in about 18 months. We had a real job on our hands to acquire the necessary amount of space. For purposes of efficiency we divided the city into about a dozen districts, and assigned a certain group

of men to each district so that space might be acquired with least possible effort by confining the activities of the men to a limited portion of the city where they would become more familiar with the property and would become more acquainted with the real estate men operating in that territory. The districting of the city had no relation to competition.

When I came to Los Angeles, competitors of Foster & Kleiser Company in this vicinity were the De Luxe Advertising Company, the Highway Display Company and the N. B. Woodcock Company. Allen and Watt and Union Advertising Company were originally two companies which consolidated before I arrived in Los Angeles. They were not competitors of ours when I arrived because our company had mare arrangements to acquire their business. When I arrived here we had just acquired them and I remember that there were some details of the transaction that had to be ironed out and the papers with reference to the transaction were signed about the 10th of March. After I arrived in Los Angeles and up to the time the papers were signed, there was no competition between Foster & Kleiser Company and Allen and Watt and Union Advertising Company. We owned the business.

When I came to Los Angeles I found the lease department was not operating efficiently. Accordingly we decided to get a new lease manager and I went to San Francisco and discussed the matter with Mr. Westbrook. I did not discuss the problem of competition with him at that time. I was thinking of getting space. I could not have discussed with him the danger that Allen and Watt and Union Advertising were about at the point of getting

Testimony of Edmund D. Young)

a national contract because we had acquired their business at the time I went to San Francisco to see Mr. Westbrook.

Q Did you ever say anything to Mr. Westbrook in this substance or to this effect: That there was danger that Allen and Watt and Union would get a national contract, and that would put them on their feet and send them off to a flying start?

A I couldn't have said anything like that.

Q Did you ever say anything of that kind to Mr. Westbrook about any competitor, actual or prospective competitor, of Foster & Kleiser Company?

A I don't recall that I ever said anything of that kind. And naturally, anybody that would get a national contract would not say they would be off to a flying start, but they would have something that would be desirable. I may have said something of that sort to Mr. Westbrook at some time.

I don't recall that any sites or locations occupied by the Special Site Sign Company were taken over by Foster & Kleiser during the time I was in San Francisco. I have no recollection of leasemen named Woolley rnd Davis or either of them ever coming into my office and reporting to me that they had been able to secure leases on property that the Special Site Sign Company was occupying. I did not tell Mr. Westbrook when I was discussing the matter of his coming to Los Angeles that Foster & Kleiser Company had seven or eight competitors in Los Angeles or that those competitors presented a problem, or anything to that effect. Mr. Westbrook came to Los Angeles on February 15, 1924. I don't know what instructions I gave

Testimony of Edmund D. Young)

him. I did not instruct Mr. Westbrook that he was to see to it that Foster & Kleiser Company leased all competitive locations in the downtown districts and on important thoroughfares in the Los Angeles Branch.

Q Well, was that the policy of the company? Has that ever been the policy of the company at any time since you have been with the company?

A Why, of course not.

Q Well, what has been the policy of the company since you have been with it with respect to locations in downtown districts?

A The policy has been to acquire all of the choice locations in the downtown district which were required for running our business; and usually that meant all of them, if they were available. There has never been a time when there were more locations than we needed in the heart of the downtown district.

Q Did you ever have any discussion with Mr. Westbrook in which you said, in substance or in effect, that one of the ways that Foster & Kleiser Company had to get information about its competitors was to discharge one of its own employees, have him get work or employment with a competitor, and then at a later period have Foster & Kleiser Company to reemploy him?

A Absolutely and positively no.

Q Did you say to Mr. Westbrook that the discharge of Craig, either in substance or in effect, did you say to him that the discharge of Craig would afford the company an opportunity to get information about its competitors?

A Why, certainly, I did not.

Testimony of Edmund D. Young)

Q Did you ever ask either Moritz or Craig for any information whatsoever concerning the plants of the competitors for whom they had been working during the period they were working for them?

A I certainly did not.

There is a department of Foster & Kleiser Company known as the Public Relations Department. There has been such a department in the Los Angeles branch ever since I have been connected with that branch. In a business such as ours where we are coming in direct contact with the public to a greater extent than any other line of business—we are sort of a semi-public utility, you might say—it becomes necessary for us to sell our business to public officials, to women's clubs or to anybody who might be in any way interested or could cause agitation adverse to our operations and our business. That is the function of the Public Relations Department; it is an educational program directed to city officials, women's clubs and others that we have to contact that don't know anything about our business. As far as I know, the Public Relations Department has no other function than that, except that it does interest itself in matters of legislation and ordinances that might affect the company or the outdoor advertising industry.

As far as I know and as far as I have ever been informed, the policies of the lease department of Foster &

(Testimony of J. D. Chappell)

Kleiser are to be found in the lease department manual. I never gave Mr. Westbrook any instructions that were not contained in the lease manual after the manual was issued. That provided our complete instructions and our operating procedure. There had been no occasion for me to give Westbrook such instructions. As a matter of ordinary daily routine, Mr. Westbrook would come into the office and we would discuss some of the locations that we were interested in and properties that we were trying to lease for our signs. I did not give Mr. Westbrook any instructions in discussing those individual properties which were not in the lease manual.

With the permission of the Court, the witness Young was thereupon withdrawn from the stand.

Thereupon

J. D. CHAPPELL

was recalled as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

The letter which I wrote to Mr. King, which is in evidence as Defendants' Exhibit AAA-6, was written in response to a letter from Mr. King. The reason for my letter to Mr. King was due to a copy of a letter that Mr. King had written to the U. S. Sign Company, another

(Testimony of J. D. Chappell)

independent plant operator under date of January 9, 1933, which the U. S. Sign Company had sent to me. Mr. King called on me in response to my letter, Defendants' Exhibit AAA-6. I asked him if he had written the letter to the U. S. Sign Company quoting different prices or lower prices than he had quoted to us on a previous occasion, and he said that he had. This copy of a letter to the U. S. Sign Company is the letter which I had and referred to in my letter which is in evidence as Defendants' Exhibit AAA-6.

MR. STERRY: I now offer in evidence this copy of a letter from Mr. King to the U. S. Sign Company dated January 9, 1933.

Witness continuing: I did not discuss this specific letter to the U. S. Sign Company with Mr. King although we discussed the subject *to* the letter. That was after I received this letter of January 9th. My discussion with Mr. King was the result of my letter to him on that subject, Defendants' Exhibit AAA-6. My testimony is that Mr. King and I did discuss the subject of the letter of January 9, 1933.

The letter of January 9, 1933 referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-6½, and is in words and figures as follows, to-wit:

(Testimony of J. D. Chappell)

[Defendant's Exhibit No. AAA-6½.]

Oakland, Calif.
January 9th- 1933

U. S. Sign Co.,
175 Post St., South,
Spokane, Wash.

Gentlemen:

Please send by Air Mail a list of your available 24-sheet posters and marked map to:

Mr. Frank Finneran,
Erwin Wasey & Co.,
507 Montgomery St.,
San Francisco, Calif.

This is the Advertising Agency handling the National Lead Co., account and they want to select posters for April 15th posting at the following prices:

$18.00 per month, illuminated,
6.00 " " regular

The Agency expects 20% commission.

If the Independents can all give them what they want on this deal, it will, we are sure, lead to something bigger in the near future.

So kindly get in touch with Mr. Finneran by Air Mail at once and give him the list and marked map. We

(Testimony of J. D. Chappell)

dont expect anything out of this in the way of commission.

This is a good account and a big agency and although they may only select a few panels for a short period it will lead to a good account for the Independents.

Yours very truly,

SPECIAL SITE SIGN CO.,

By Charles H. King.

P. S. Submit all towns where you have panels available.

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. AAA-6½ Filed 1/22 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

It was thereupon stipulated that the contract register of the Special Site Sign Company marked Plaintiff's Exhibit 121-A for Identification showed a contract between Special Site Sign Company and Erwin Wasey & Co., 333 Montgomery Street, San Francisco, for display of National Lead Company, Bass-Hueter Paints, that the terms of said contract were $96 per month less 20 per cent to Agency, under the contract date 2-20-33, to run four months from March 15 to April 15, 1933; invoice to read May 1st, June 1st, August 15th, September 15th, October 1st, November 1st, 1933.

(Testimony of J. D. Chappell)

Q I want to ask you, as long as this subject has come up, does it make any difference to the agency at all in handling the account of Mr. King or the Special Site or any other plant what commission they charged, so long as it was the same to everyone?

A Well, we don't represent the particular agency involved here, so I can't answer that. If I may put it, our only interest in this matter was that we had previously been quoted a price that was entirely different than this; in other words, as I recall, we were quoted $7.50 on regular panels and $32.50 on illuminated panels, $7 on unilluminated and the usual agency commission of 16-2/3. Well, naturally, we felt that we were being discriminated against when we found that some one else was being quoted a lower price than we, so naturally we thought it was our duty in the interests of our agency members to bring it to Mr. King's attention, not that we were interested in upsetting Mr. King's price, but whatever Mr. King quoted to someone else he should also quote to us.

Q And that was the subject of your conversation with him?

A That was the subject of the conversation.

CROSS EXAMINATION

BY MR. GLENSOR:

This whole transaction occurred in 1933. The established commission rate with all plant operators is 16-2/3 per cent. Wherever an plant operator pays a higher rate of commission, if that high rate is paid to us we retain the same proportion of the commission that we retain on

(Testimony of J. D. Chappell)

any business and the balance goes to the advertising agency. I don't recall any business that the Bureau had placed with the Special Site Sign Company prior to January, 1933. I don't recall that we have placed any business with the Special Site Sign Company since then. We were concerned about what Special Site Sign Company paid on commission or paid to another agency because we had received a request from one of our agency members who was interested in doing business with the Special Site Sign Company. That request came from the H. K. McCann Company in the interests of the Fuller Paint Company. The Fuller Paint Company, because of the fact that they got paint business from the independent plant operators, used the independent plants for the outdoor advertiser and it was in their interest that we made an inquiry. We also had a request from the Campbell Ewall Company about the plant of the Special Site Sign Company and we submitted all of the information and material that we secured from the Special Site Sign Company without comment. I would say that the inquiry about the Fuller Paint Company came to us about two or three months before I wrote this letter to Mr. King. I don't remember how long it had been since we had had the other inquiry. We did not make a recommendation that they put their business with the Special Site Sign Company; we do not make recommendations for any plant.

(Testimony of E. D. Young)

Thereupon

E. D. YOUNG

was recalled as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I never told Mr. Westbrook that he should keep independents so busy protecting their own locations that they could not sell their space. I never told him anything like that in substance or effect. It never was the policy of Foster & Kleiser Company to keep independents so busy with their locations that they could not sell their space. The policy of Foster & Kleiser Company was to make contacts on competitive locations to the end that we would keep them busy protecting their own locations and leave us alone. I never told Mr. Westbrook, either in substance or effect, that if Foster & Kleiser Company were not prepared to take care of the advertising business that some would go to a competitor and that therefore Foster & Kleiser Company would have to maintain intense leasing activity. It was obvious that if Foster & Kleiser Company could not take care of the business offered to it that it would go to a competitor. I know of no reason why Foster & Kleiser Company should not attempt to take care of the business offered. We would like to obtain all the business we possibly could by fair and legitimate means.

The operations and activities referred to in Account A were going on at the time Mr. Westbrook got down

here in 1924. Those activities were begun in January or February of 1924, just prior to Mr. Westbrook's arrival. The general nature of the Account A activities was the contacting of competitive locations by a man who had been assigned to that work. Shortly after I took over my duties as assistant manager here, Mr. Musaphia, who was then manager and had assumed his position at the same time that I assumed mine, instructed me to detach one of the leasemen from the company's payroll and instruct him to set himself up ostensibly as a real estate operator in an office removed from ours. The purpose of that was to keep it secret. The instructions were that this individual was to make contact on competitive locations for the purpose of dispossessing the competitor and breaking his advertising lease on the property. The man who was so detached was Clyde Meyer. He reported to me. After Westbrook got down here, I told him of these operations. The financial account of money expended in these operations was kept in what we termed Account A. It was a subdivision of our general expense account. It had no relation at all to the expense of the lease or space department and had no connection with that department. Mr. Westbrook being the manager of the lease department, I felt that he should have knowledge of everything pertaining to leasing activities and although this was not in accordance with Foster & Kleiser's policy or anything of that sort and although Meyer was working at an office removed from ours, I felt that I should not conceal anything from Mr. Westbrook and I explained to him in detail the operations. Mr. Westbrook never acted as a contact man for me between myself and Meyer.

(Testimony of E. D. Young)

I had a private phone installed in my office for the purpose of contacting Meyer so that it would not take me away from my duties. I felt that the whole thing was a ridiculous procedure and I did not want to devote any more time to it than I had to. Since the money was being drawn by myself and was being paid to me personally, I did not want to be in a position of not being able to explain where the funds went. Accordingly I called in our accountant and office manager, Llewellyn D. Wilson, and instructed him to keep an accounting record, that is where Account A came into being. As the money was required for these operations of Meyer's, I drew cash from our company funds and charged it to the general expense account 363. These operations lasted until some time in the late summer or early fall of 1924. Mr. Musaphia, the manager, authorized the institution of these activities and the taking of the steps which were taken. I was the assistant manager and he instructed me to put those activities into operation. As far as I know, the general office of Foster & Kleiser Company never knew anything about those operations while they were going on. The operations were stopped in the late summer or early fall of 1924 by Mr. Lausen, who came down here. That was about the time of the sale of the Neale Brothers' plant, known as the De Luxe Advertising Company, to Foster & Kleiser. Mr. Lausen came to Los Angeles and told Mr. Mysaphia and myself that we had exceeded our authority and that acts of that kind were contrary to all company policy, that the activities of Account A must be terminated and terminated at once and that we were never to indulge in them again.

(Testimony of E. D. Young)

Walter F. Stevens came to Los Angeles in the summer of 1924. To the best of my recollection, he did not have anything to do with the Clyde Meyer operations. I know positively that he was on the payroll of the company during the entire time he was here. He worked out of the Los Angeles office and maintained his headquarters at our office on Washington street. I did not tell Mr. Westbrook not to let Mr. Stevens come around the office and Stevens was there every day. I recall that Stevens left Los Angeles and went to Seattle as lease manager. I had a discussion with Mr. Haynes, our general lease manager, about that time, concerning a new lease manager for the Seattle branch. There were three men under consideration for that position, Mr. Stevens, Mr. Elwood Smith and Mr. Patch. All three of them later became lease managers. Mr. Smith is the present lease manager of the Los Angeles branch, having succeeded Mr. Westbrook, and Mr. Patch is lease manager at the Long Beach branch. I never had any discussion with Mr. Westbrook about the establishment here in Los Angeles of a school for the training of lease managers for other branches.

Account A was subsequently reopened some time in the early part of 1927. LaFon had gone back into business in Los Angeles in 1926. Mr. Musaphia called me in his office and told me in substance that he wanted the activities which I have termed here as Account A again instituted against the LaFon Company, and he asked me to assign Meyer to that work. I reminded Mr. Musaphia at the time of Mr. Lausen's instructions about that and he said, rather gruffly, that he was the manager of the branch and would take the responsibility. I left the office

(Testimony of E. D. Young)

and called Meyer in and told him what to do and the work was gone through with. The account was finally closed in September, 1927, after it had been in operation for approximately six months. It was opened the second time within a year after LaFon went back into business. I received reports of the Clyde Meyer activities during the second period of Account A. His reports were made in the same manner as they were in the first period and I turned them over to Wilson who kept the account. I would say that about $15,000 was spent on the two phases of Account A. The circumstances under which the account was closed the second time were that Musaphia told me that one of the Neale boys who had formerly owned the De Luxe Advertising Company had called him on the phone and told him that Mr. LaFon had called him (Neale) up and wanted to know who Neale's attorney was and said that he (LaFon) had learned of these activities that I have described and that he was going to file suit against Foster & Kleiser. Upon receipt of that information from Neale, Musaphia went down to Gibson, Dunn & Crutcher's office in Los Angeles and laid the matter before them. When Musaphia told me that Neale had been in touch with him, he had already been down to Gibson, Dunn & Crutcher and he told me that he had been advised by them that it was a very dangerous thing that he was doing and that he should not be doing it. Musaphia was very indefinite and I don't think he got a very complete report. Musaphia and I talked the situation over and decided that the proper thing to do would be to go to San Francisco and lay the matter of a possible lawsuit before Mr. Lausen, the general manager. We

(Testimony of E. D. Young)

went to San Francisco around the 15th or 20th of September, 1927. Musaphia explained this phone call from Neale and the possibility of a suit and told Lausen that he had been down to Gibson, Dunn & Crutcher. Mr. Lausen inquired whether he had told them all about it and Musaphia said that as near as he could remember he had told them all. Mr. Lausen was pretty severe and told us that we had again exceeded our authority and that he was very surprised to find out that we had opened the account and reengaged in activities of that kind over his previous instructions to the contrary. Mr. Lausen told us to return to Los Angeles right away and go to the office of Gibson, Dunn & Crutcher and be sure to lay all of the details of the matter before them. Musaphia and I returned to Los Angeles and subsequently went to Gibson, Dunn & Crutcher's office. A stenographic record was made of the statements that were made at that visit by a court reporter. Mr. Sam Haskins and Mr. Elmer Conley represented Gibson, Dunn & Crutcher in the matter. In addition to those two, there were present Mr. Musaphia, Mr. Gilman Haynes, Mr. Elwood Smith, Mr. Clyde Meyer and myself. The activities of Account A were stopped when we were in San Francisco and before we came back to Los Angeles. I don't know when the account was actually closed as a matter of bookkeeping; it was about the time that that statement was made. I do not know accurately when the first phase of Account A was closed as a matter of bookkeeping; it was some time around the time we acquired the De Luxe Advertising Company and I think that was in October, 1924. I have read the statement that was made at the office of

(Testimony of E. D. Young)

Gibson, Dunn & Crutcher since it was made. That is the statement that is here in evidence marked Plaintiff's Exhibit 20-G.

When Mr. Lausen was down here the first time with respect to the first phase of Account A, Mr. Kleiser was not with him. As far as I know, Mr. Kleiser was not in the state. I know he was not here when the deal was concluded of taking over the business of the De Luxe Advertising Company.

Q Well, has Account A ever been opened since 1927, Mr. Young?

A No, sir, it has not.

Q Have any such activities ever been indulged in since that time?

A I'll say they have not.

I have seen Foster & Kleiser's office bulletin No. 74 but I don't remember when I saw it for the first time. I was in San Francisco at the date the bulletin was issued and I probably saw it there. I have also seen Foster & Kleiser's bulletin No. 242 but I don't recall when I first saw it. I have been assistant branch manager here in Los Angeles since January 1, 1924, and prior to that time I was lease manager in San Francisco. I was lease manager at the date of bulletin No. 74.

Q Has it ever been the policy of the company to take competitors' locations, whether the company needed them or not?

A No, sir.

Q Has there ever been a time since you first became connected with the company, when the company had more

locations than it could use in the so-called extra tight district of the communities in which it operated?

A Yes, sir, during the depression but at no other time.

Q Was it ever the policy of the company to invade or cause a breach of a lease, of a competitor's lease on an advertising location?

A No, sir.

Q Was it the policy of the company to take locations occupied by the competitors in any circumstances or under any conditions?

A No, sir.

If the rights of the competitor had terminated, the policy of the company would depend entirely upon whether or not we needed that location and upon the character of the location from the outdoor advertising standpoint. If the competitor's rights had terminated and the location was a desirable one and one that would fit into our scheme of operations, if it was a location that we needed in the running of our business and the lease conditions were right, we would take it. Leases for advertising sites are the raw materials of the outdoor advertising industry. There wouldn't be any business such as this without these locations.

Q Well, what was the policy of the company with respect to outdoor advertising locations here in the branch and elsewhere, so far as you know—what kind was it trying to get?

A To secure at all times the choicest locations which were available, for the maintenance of our structures.

(Testimony of E. D. Young)

Q That has been the policy of the company and is now, isn't it?

A Always has been during the time I have been connected with the company.

The Class C leases referred to in bulletin No. 242 is a lease with a term of less than one year. We have, and had in 1924, four classes of leases, A, B, C, and D. The Class D lease is where we have verbal permission from a property owner to occupy his premises; there is no written agreement or understanding. Bulletin No. 242 taken in entirety represents the policy of the company with reference to leasing. At no time since I have been assistant branch manager at Los Angeles or during the time I was leaseman and lease manager at San Francisco did the policy of the company differ from the policy as stated in that bulletin as a whole.

Basing my statement upon my experience with the company, I would state that it has been necessary for Foster & Kleiser Company to have a reserve of unbuilt space at all times; that is a necessary part of running the business. From my experience, I find that losses of locations are always due to the use of property which we are occupying for some other purpose than advertising, such as a building or a business development or an auto park or a used car lot or an oil station or any one of many things. We have lost locations to competitors but by far the greatest cause of our losses are due to the causes which I mentioned other than the loss to competitors.

Q So far as competitors have been concerned, has it been necessary for you to keep a reserve of unbuilt space?

A Why, yes.

(Testimony of E. D. Young)

For every $100 which Foster & Kleiser Company has spent for its built plant, it has spent $22 for reserve in the Los Angeles branch. That is the average for a six-year period when business was normal, that is, the period from 1925 to 1930 inclusive. I would say, as an estimate, that we have 70 per cent as many leases now in the Los Angeles branch as we had in 1928. The footage that we have now as compared with what we had in 1928 is about the same, approximately 70 per cent as much. That has reduced the unbuilt space. It is my experience that the necessity for built space and the necessity for unbuilt space go together. If we carried no unbuilt space and lost locations in showings and had to go out and get locations to replace the lost ones, the result would be that our rents on individual locations would cost us considerably more. That tendency would be accentuated if competitors were in the field and we lost the location and had no unbuilt space; that is very obvious.

CROSS EXAMINATION

BY MR. GLENSOR:

Mr. Musaphia, prior to leaving the company as branch manager, wrote a great many reports regarding the operation of his business. If he ever wrote any special letters regarding competition I didn't know of it. The "competitive reports" mentioned in the branch managers' reports are a part of our general statement that goes to the home office each month; that is a part of the general statement and we keep it. We have office memoranda with respect to competitive locations but there is no reason for cluttering up our files with that sort of thing and we destroyed them, in accordance with the policy which I

(Testimony of E. D. Young)

have just stated. I couldn't state positively whether I, as lease manager in San Francisco, ever had any of my men endeavor to lease any sites on which there were competitors' structures. As a matter of general procedure I did not. I would not say that a few locations occupied by competitors were not contacted. During the entire time which I have been with Foster & Kleiser Company, the policy was to lease all choice locations that we required to properly conduct our business. We never leased any locations that we did not need. It was never our policy to jump a competitor's lease but if a competitor was on a location that was desirable and one which we needed and could use in the operation of our business and if his lease had expired or terminated, or for some other reason the property owner was willing to enter into an arrangement with us, we have made a lease on the property.

Mr. Roy McNeill never discussed with me the company policy with respect to leasing competitors' properties for the simple reason that we had no competition to speak of in San Francisco at any time that I was there.

I learned the policy on competitive leasing after I came to Los Angeles through our office bulletins and through the lease department manual. I am not as familiar with that manual as I should be, but I am familiar with it. I wouldn't say that I learned much of the policy from Mr. Musaphia here in Los Angeles. We still have a complete file of office bulletins in our office here in Los Angeles. I presume I saw bulletin No. 74 when it came out in November, 1922 and I presume I read it all. That was while I was in San Francisco. I paid no attention to it

at all. It was not a matter that I was concerned with in San Francisco. It did become a matter of some concern to me when I came to Los Angeles but it was not called especially to my attention when I got down here. I had the bulletin in mind because it calls for making out a report to the general office on competition, known in those days as Sheet 9, which afterwards became Sheet 15. It is the inventory of competitive plants. I gave the leasemen in Los Angeles no instructions as to what they were to do when they contacted competitors' lessors. Our policy was known to the lease manager and the leasemen. It is hard for me to say where they got the policy from but they presumably and undoubtedly got it from the bulletin.

Q Then the only information that these leasemen had, no matter how it was transmitted to them, the only statement of policy as to what to do when they contacted these competitors' lessors was embodied in the bulletin?

A Well, I do not doubt at all but what I might have talked over the substance of this bulletin with Mr. Westbrook and interpreted it. I may have done it, and he in turn passed on these instructions.

I don't know of any written information containing a statement of our company's policy that was in effect in 1924 other than bulletins No. 74 and No. 242. There may have been other bulletins but I don't know of any. I don't recall that I have ever seen another one.

Q Now, you note in there the statement in your Bulletin 74, to start with, that it is the company's policy to take competitive locations, whether they need them or not.

A That is the way this reads, yes.

(Testimony of E. D. Young)

Q And you say, as I understood you, that that never was the company's policy?

A Not the way you put it to me.

Q Oh, it isn't the way I put it. It is the way the bulletin puts it, Mr. Young. "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not." And that never was your company's policy?

A Well, I would say that, properly understood, that represented the policy of the company.

I can't show you any written statement that would indicate that that statement in the bulletin which you have just read means anything different than what it says. I can't tell you of any instruction that was given to me by any of my superiors in Foster & Kleiser that was contrary to or in conflict with that statement in the bulletin but that statement doesn't mean whether we could ever use or ever need a location. It obviously does not mean that and couldn't mean that. If we acquired a piece of property, whether it had formerly been used by a competitor or whether it was a vacant piece of property, and we put that in our reserve, there is nobody who can say whether we would ever have need for it at the time we make the lease. We wouldn't make a lease on any piece of property whether occupied by a competitor or whether it was vacant if we did not feel that we had a reasonable need for it and if we did not feel at some time we were going to need it. As I interpret that language in the bulletin, it means that some time in the future there is a possibility that the company might need that competitive location. If an outdoor advertiser has to move and keep

moving his location, it puts him to the expense of moving boards but I wouldn't say it is a disturbing influence on his business. That is a matter of routine procedure in the outdoor advertising business and we move locations constantly. I don't agree that the moving of locations has a disturbing effect upon the advertisers. It is a part of our job to have a sufficient supply of locations so that we can replace a plant as we lost it and not disrupt or disturb the relationship with the advertiser. For instance, in Los Angeles a showing of posters consists of 117 panels and that is what the advertiser contracts for usually for a period of thirty days. In the normal course of our operations, in that thirty-day period we are liable to lose one, two, three, four, five or six of these locations. We have to have a sufficient reserve plant properly distributed all over the territory in which we operate so that if we lose an advertiser's locations today, we can replace it on another location without disrupting the service, so I don't see where losing locations has any disrupting effect upon the advertiser. In my opinion, the moving of competitors off the location would have no particular influence upon the competitors and would not hurt them at all except by putting them to the expense of moving their boards and getting another location. I would say that it would not disturb their relations with their advertisers.

Q Now, let us pass on to this next clause in this bulletin. "The only way to protect our investment in this business is to make competitors move and keep moving." Now, first, let me ask you: At any time after you entered the service of this company did they call your attention to

(Testimony of E. D. Young)

any particular protection which their investment needed in the business?

A Why, of course.

Q What protection did they say they needed in their business?

A What protection do we need? Obviously, we have to protect the investment you have in your structures and your sites.

Q Sure. Will you tell us now what that portion of the bulletin, properly interpreted, and you put an interpretation on it, means when it says the only way we can protect our investment in this business is to make competitors move and keep moving?

A Why, certainly I can tell you. The only way we can protect our investment is to endeavor to keep competitors from disturbing our locations. And how did we do it? By going out and contacting the locations. They started in by going after ours and made it pretty nasty for us, and in order to protect our investment, to protect the locations which we had built and developed, we found it necessary to go out and contact theirs to keep them busy.

Q I see.

A And that is gospel truth.

That is what that particular clause means and it doesn't mean anything else. The statement in Bulletin No. 242, "You should make contact as often as you deem advisable but at least every four months on locations that are occupied by competitors in your tight district. We must secure all such locations whether we have need for them or not." means just the same thing as the similar

statement contained in Bulletin No. 74. That is my own interpretation of that statement. The clause in Bulletin No. 242, "The only way to protect our investment in this business outside of sales effort is to make competitors move frequently. We would have comparatively few worries if we could keep them outside our tight districts" means just the same as it did in Bulletin No. 74. The tight and extra tight district in Los Angeles includes not only the heart of the City but extends out for quite some distance on heavily travelled arteries. You can't conduct the bill-posting business succcessfully unless you have locations in the tight district if you are offering a city-wide service. Our showings are all built with a certain amount of distribution in that tight district. To me, the statement, "We would have comparatively few worries if we could keep them outside our tight districts" is a perfectly obvious statement. Of course, we would have fewer worries if we could keep competitors out of the tight district and we would also have fewer worries if we could do all the outdoor advertising business that is to be done.

Q Sure. And, coupled with the statement that you must make competitors move frequently and that you would have fewer worries if you could keep them out of your tight district, that means what to you?

A Just as I have explained, it means that we would have fewer worries if we could keep them out of our tight district.

Q Isn't this the fact: That paint, being sold in selective showings or selective units, and posting being sold in showings, displays which must have distribution

(Testimony of E. D. Young)

in the tight district, that if you can keep all competitors out of your tight district they can't go into the posting business?

A I would say this, Mr. Glensor: That it would be utterly ridiculous to attempt to keep competitors out of the tight district; and the reason that it is utterly ridiculous to keep competitors out of the tight district is the simple fact that there are thousands of unsecured locations in the tight district available for anybody that wants to go out and lease them and use them. I might illustrate that by saying this: That in this tight district —that bulletin is written in 1924. Now, between 1924 and now, we have probably leased, ourselves, 10,000 locations,—10,000 panels in this very territory that we are talking about, the tight district. Why do we lease 10,000 panels in the tight district? To take care of the plant which we lost. Our total plant up to 1930 before the depression was only slightly larger than it was when that bulletin was written in 1924. Now, mark, that while we maintain the same amount of plant in that tight district, comparatively speaking,—the difference is about 6 per cent—while we maintain the same amount of plant, we found it necessary, due to the development of properties, to buildings going in and oil stations going in, and a thousand others things, which took our locations from us—we found it necessary to replace, roughly, 10,000 panels. I would say this: That if it were practical or possible to keep your competitors out of the tight district, why, sure, then you would have all the business.

Q That is exactly what I was going to ask you, Mr. Young. Ridiculous or not, that is what you were trying to do, isn't it?

(Testimony of E. D. Young)

A No, we weren't trying to do anything that was foolhardy to start with.

Q You were not trying to keep them out of the tight district?

A Why, of course not.

Q If you did, it would mean that no competitor could go into the bill-posting business, at least, wouldn't it?

A That is right.

I have stated that the activities in the under-cover department were not known to the general office in San Francisco until the Neale Brothers brought it to their attention. I never made detailed reports of those activities to Mr. Musaphia and I never made a written report at any time. To my knowledge, Mr. Musaphia did not make detailed reports to San Francisco on these actitivies. I wrote part of the branch manager's letters from the Los Angeles branch and Mr. Musaphia wrote part of them. The Neale Brothers company, the De Luxe Advertising Company, was taken over in October, 1924 or thereabouts and it was a short time before they were taken over that the Neale Brothers went to San Francisco and complained to Mr. Lausen that we had been doing some unethical things through this under-cover department. Then Mr. Lausen came to Los Angeles and the activities were terminated and he told us never to do it again. I am quite sure that prior to that time no one in the San Francisco office had ever known what we were doing here under Account A. The Los Angeles branch manager's letter dated September 22, 1924, marked Plaintiff's Exhibit 22-G, was probably written partly by Musaphia and partly by myself. I

(Testimony of E. D. Young)

would say that I probably wrote the comments here and the summary was prepared by the accounting department. I would think that this statement in the letter, "The increases in our establishment expense are represented chiefly by activities in Account A." was the first reference to Account A that had ever been made to the San Francisco office in any report or letter; to the best of my recollection, it was. I don't know of any explanatory matter or anything that went up to San Francisco which would show them what Account A was or what it represented or what it covered; I am pretty sure that none went up. I just said that the increase in establishment expense was represented by Account A without any explanation of what the account was or what it was for. Mr. Lausen had knowledge of it at the date of that letter. We bought the De Luxe Advertising business in October, 1924 or thereabouts and it was some time prior to that that the Neales went up to San Francisco and talked to Mr. Lausen about it and Mr. Lausen had been down here and talked to us before that letter was written. The statement in the letter of October, 1924, "The outstanding feature of establishment expense decrease was that of $1,576, due principally to decreased activities of Account A." required no comment for the same reason because they knew all about it by that time. After the Neale brothers had been up to San Francisco and when Mr. Lausen came down to Los Angeles, he told Musaphia and myself that we had exceeded our authority and had violated the company's policy and that we were never to indulge in practices of this kind again.

(Testimony of E. D. Young)

Mr. Haynes was present at the time this statement, Plaintiff's Exhibit 20-G, was made, together with myself and Mr. Musaphia, Meyer, Conley, Smith and Haskins. I read the statement once since it was made and I glanced at it within the last month. Mr. Lausen told us to be sure and make an accurate statement to Gibson, Dunn & Crutcher of what had occurred and Musaphia and I came back here with the intention of seeing that such a statement was made. I personally felt quite a degree of responsibility in the matter. I had exceeded my authority and I was a little uneasy about it. I haven't read plaintiff's Exhibit 20-G for a long time. I was present when Mr. Musaphia said, as reported in that statement, "I want to say right there, that at the time, at the time the De Luxe was taken over, we were instructed by Mr. Lausen and Mr. Kleiser, to be very careful about any such operations in the future as they felt they were very dangerous and felt that at the time we took the De Luxe over, that those fellows had a very good case against our company." I would say that that statement was incorrect. I did not speak up and correct it, but Mr. Kleiser never told me anything. As I remember it, Mr. Kleiser was not here. I think he was in the East when that business was acquired.

Naturally I didn't undertake to correct the statement at that time. We were not down there for that. I was not down there to argue with my boss. We were instructed to go down there and recite in detail the acts that had been committed. I probably noticed that he was in error in making that statement, but it was a matter of inconsequential importance.

(Testimony of E. D. Young)

I am positive that Mr. Haynes was not present when Mr. Lausen gave those instructions about closing the account. As I remember it, Walter Stevens never worked in the under-cover department; that is my best recollection. I might add that I understand that he said he worked in it but I don't recall it.

I rather summarized my testimony about the public relations department by stating that it was an educational program. This close contact with public officials was not always entirely educational we had business to transact. The work that we did with some of the public officials like the Department of Public Works here in Los Angeles was quite important. We never had any arrangement whereby we got advance information on our competitors when they secured permits to erect structures; we didn't need it. The most important thing about which we were concerned which related to the public officials was to watch and guard against adverse legislation; that is where our educational policy and educational efforts come in because very often you can have adverse legislation due to misinformation on the part of somebody that promotes that legislation.

Q You used to spend quite a bit of money, didn't you, in keeping your relations with the City Hall right?

A Not that I know of.

Q. In your branch manager's report for February 25, 1925, I find this entry: "Miscellaneous sales department expense increased in connection with various Christmas remembrances to our theatrical advertisers and influential City Hall connections." Now, you used to take care of them at Christmas, didn't you?

(Testimony of E. D. Young)

A Why, we have made minor gifts, yes, a box of cigars or something of that sort.

It is not a fact that we had accounts at several of the large stores here which we used in taking care of these City Hall connections in our educational program. We had an account at Alexander & Oviatt's but it was not for that purpose.

Account B was Musaphia's personal expense account. There were items charged into that account all right but I don't know where they went. Musaphia had the spending of the money in that account.

I was assistant branch manager here in 1924. We were not at that time or at any other time trying to keep competitive companies from obtaining a foothold in our tight or extra tight district. At that time we were very busy occupied getting our own properties. We were not interested at all in preventing competitors from securing a foothold in the tight district.

Q Well, I want to show you the Los Angeles branch manager's report for October, 1924.

"Space rental increased during the month to the amount of $183.00. There was, however, an increase of $584.00 in unbuilt space rent. This increase is covered by two locations at El Monte and Pasambra, northeast and northwest, at a rental of $500.00 and $900.00, respectively, which were transferred to this branch from the Restop Realty Company. They also secured eight other leases, for which it was necessary to make a high rental occcasioned by the efforts we are concentrating upon our extra tight district. Our policy in this respect has been to segregate from our tight district twelve main arteries,

(Testimony of E. D. Young)

which are now know as our extra tight district. By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a large area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them."

Now, does that refresh your memory as to what you were trying to do in October, 1924, about your position in the extra tight district?

A Yes, sir.

Q And what were you trying to do, keep them out or let them get in?

A Just what it says here. We were naturally interested in the extra tight district, first of all, Mr. Glensor, because there was a limited amount of space there. Now, competition by paying for that space, as we were, and that was our raw material against the future, against our future needs, so certainly we did the obvious thing and concentrated on those few streets. We knew we would have use for it and we did have use for every location that we acquired.

Q Thus making it increasingly difficult for the opposition to secure a foothold, that was a mere incident?

A It probably had that effect, yes.

(Testimony of E. D. Young)

REDIRECT EXAMINATION

BY MR. CLARK:

With respect to my testimony about the company's policy being to keep competitors out of the tight district, I of course knew that when Foster & Kleiser Company got a location anywhere that the inevitable result would be that our competitor could not get it. That did not prevent us from bidding on a locaation that we needed in the business. I knew that if we attempted to lease desirable locations in the extra tight district or anywhere else that if we leased them our competitor could not lease them at the same time.

Q Then, did you or did you not lease them for the purpose of preventing the competitor from getting them or for some other purpose?

A For the purpose of operating our own business.

Q Although the necessary result was that the competitor could not get them; you knew that, didn't you?

A Yes, sir.

If we had not leased them, in time the competitors would have had all our business. All my testimony since I have been on the stand is according to my own recollection and not somebody else's.

I did not interpret Bulletin No. 74 to say, nor did I understand it to mean, that Foster & Kleiser was to take all competitors' locations whether they needed those locations or not at any time whatsoever. I understood that bulletin to mean that we were to take competitors' locations if we needed them whether we needed them at the particular time that we leased them. I know that neither

(Testimony of Frank L. Allen)

the language of Bulletin No. 74 nor Bulletin No. 242 was carried into the lease manual.

MR. GLENSOR: Mr. Clark calls my attention to the fact that there is some distinction between branch managers' letters and branch managers' reports. I really don't know what it is.

MR. CLARK: The branch manager's report, as I understand it, states the financial data as it is sent forward; the branch manager's letter, as shown here, is the branch manager's explanation of what is shown in his financial report.

Wednesday, January 23, 1935.

Thereupon

FRANK L. ALLEN

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have no connection whatsoever with Foster & Kleiser Company, and do not own any stock, or bonds, or securities, or indebtedness to it. In the fall and winter of 1929 and the spring of 1930 I resided in Los Angeles. I am acquainted with Mr. LaFon who was president of the LaFon System, Inc. I remember the sale of the LaFon plant to the Restop Realty Company some time in March or April of 1930. As I recall, in the latter part of December, 1929, Mr. LaFon called me and asked me

to discuss with him an important matter pertaining to his business. I met him and he told me that Foster & Kleiser had erected advertising structures on streets on which there were supposed to be no structures of that kind. He listed 15 or 20 such instances and asked me to take the matter up with Kent Parrott. After discussing the matter with Mr. Parrott, Mr. Parrott said the ordinances seemed to be very old and were very technical and that he didn't know what he could do about it. I then reported that conversation to Mr. LaFon and talked at some length and said: "Frank, are you so dumb that you can't see that I want to sell my business?" So I proceeded to endeavor to sell his business for him, and the most likely prospect that I could think of was Foster & Kleiser Company.

I contacted Mr. McNeill of Foster & Kleiser Company; Mr. Parrott arranged the appointment with me. I had considerable negotiations on the matter through Mr. Elmo Conley, of the office of Gibson, Dunn & Crutcher. From the first time I saw Mr. McNeill until the last interview with Mr. Conley, about two weeks before the papers were finally signed, I carried on the negotiations entirely for LaFon. We asked about $300,000 for the LaFon plant at first. In discussing the terms of the deal with Mr. McNeill, Mr. McNeill never discussed it in any light except as to the value of the assets they had to offer.

CROSS EXAMINATION

BY MR. GLENSOR:

Nothing was said about a sale of the LaFon plant at my first interview with Mr. LaFon. The subject was opened up at the second interview when he told me that

(Testimony of Frank L. Allen)

he wanted the money and wanted to get out. He was particularly vindictive against the Foster & Kleiser Company. I don't recall that Mr. LaFon ever said, "Frank, they have gotten me to my knees," or "beaten me to my knees." Mr. LaFon told me that his company had been subjected to considerable pressure which had brought him into a condition where he wanted to sell his plant. He told me that they were large competitors and they hurt his business like any large competitor would. All the negotiations which I participated in were conducted with McNeill and Mr. Conley of Gibson, Dunn & Crutcher. Mr. Conley only entered into it toward the last. I did not know anything about the Restop Realty Company until I saw the preliminary papers up in Mr. Conley's office. A letter was written in which LaFon stated that he had not been subjected to any unfair competition. This document which you hand to me, Plaintiff's Exhibit 21-A-3, appears to be the letter which I described a moment ago to the general effect that LaFon was making a voluntary sale. I personally had not charged Foster & Kleiser Company with unfair practices or any oppression of LaFon and I don't believe that Mr. LaFon in my presence had made any charges of that nature during these negotiations. The letter was brought out and presented by someone representing Foster & Kleiser, who said they wanted it. I don't recall what was said by the representatives of Foster & Kleiser when they brought this letter up and said they wanted this letter. So far as I know it was a spontaneous desire on the part of some one on the other side of the deal to get such a statement in writing from Mr. LaFon.

(Testimony of Gilman B. Haynes)

REDIRECT EXAMINATION

BY MR. STERRY:

If I remember, I think I called Mr. LaFon about several things while we were in this conference and I think this letter, Plaintiff's Exhibit 21-A-3, was one of the matters that I called him about and talked with him about. Mr. Conley presented the letter and I don't remember the exact reason he gave, and then I think I called Mr. LaFon and asked him whether he had any objection to signing it. He said he had no objection and that is all I remember about it. It is entirely possible that when Mr. Conley presented the letter he made some statement as to why he wanted it but I have forgotten now what his reasons were. I don't remember now what he said.

Thereupon

GILMAN B. HAYNES

was called and sworn as a witness on behalf of the defendants, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am now employed by Foster & Kleiser Company as Lease Manager, and have been in the employ of the company continuously since 1915, except for the war period.

Prior to the time that I was made Lease Manager, Foster & Kleiser Company had no one in general charge of leasing matters. My first experience in obtaining leases

for outdoor advertising was shortly after I entered the employ of Foster & Kleiser Company.

Two men named Ellert and Stevenson had worked for the J. Charles Green Company as salesmen and when Foster & Kleiser Company acquired the assets of Green they started out in business and immediately took away about 30 or 40 of Foster & Kleiser's best locations in San Francisco on which we had structures. When this happened I, together with all the other salesmen, was instructed to go out and get written leases covering our built locations in San Francisco, to cover locations on which Foster & Kleiser Company actually had structures at that time. Prior to that time Foster & Kleiser Company had no leases but merely had advertising permits. Plenty of our leases were held on mere oral permits.

In 1919 when I went over Foster & Kleiser's leases in San Francisco, I found that over 50% of their leases were poor leases, that is, Class "C" or Class "D" leases. A Class "C" lease is a lease whose term is for one year, or from year to year, and a Class "D" lease is a lease that is less than a year, or a mere verbal permission.

The leasing records of the J. Charles Green Company when Foster & Kleiser Company took them over in 1915 were very poor. There was no system for determining when rent was due or when leases would expire, and no system for determining which were canceled and which were uncanceled leases. In addition, the property descriptions in the leases were very poor at that time. We now describe the property by legal description.

In 1919 or 1920 I made a trip to Los Angeles and surveyed the leasing situation there, and found a situa-

tion similar to what I found in San Francisco. I also found a very acute competitive situation existing in Los Angeles, because Erskine and La Fon were very active. They were bothering us on our locations upon which we had structures and taking away locations that we had, and things were very acute. They were also securing unbuilt locations that we had need for here, and I came down to develop ways and means of protecting our investment in this business.

The first step that I took with respect to the system was to install a rental system, that is, our rental card and a lease envelope. I did that because our leases were in very had shape, and we were being attacked by competitors and we wanted to get our records in shape where we would have some rights on the property. If the record of the rentals was not in good shape, some of the rentals would not be paid and the competitors would get our locations away from us.

I went over the lease situation with our attorney and we worked out a set of twelve different forms of leases to cover the properties that we were operating on, which would make us more secure against competition and, in fact, against anybody getting leases away from us. I also organized an index system and a system of arranging the rental cards so that the rental dates could be found properly.

(Testimony of Gilman B. Haynes)

I installed our so-called office record card system in 1921.

In the early days I did considerable work in auditing of leases. That consists of periodically taking every lease out of every file in every branch and examining it to see if that particular lease covered the particular location it was supposed to cover. In auditing leases we would grade them into Class "A", "B", "C" and "D", "A" being the best type of lease we could get.

In our office record card system we had a corresponding field card for each office record card and in order to facilitate matters with the leasemen we had different classifications of cards. The cards for these different classifications had different colors.

Up to 1925, I made a survey of leases for the years 1920, 1921, 1922, 1923 and 1924 to find out the leasing conditions existing in the various branches. I put this in the form of a written report which was sent out as office bulletin No. 329, which bears my signature. The graph attached to the bulletin is the graph referred to in the report or a copy of it.

The office bulletin and the graph referred to by the witness were thereupon received in evidence and marked Defendants' Exhibit AAA-10 in evidence, and read into the record. A true and correct copy of said Defendants' Exhibit AAA-10 in evidence follows:

[Defendant's Exhibit No. AAA-10.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 329

San Francisco, Calif.,
May 11,1925

Foster and Kleiser Company

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen:— Subject: Chart No. 1, Comparative Record of Leases and Contacts

We are enclosing under separate cover Chart #1, Comparative Record of Leases and Contacts, which shows graphically the number, condition and development of leases and contacts and the relative standing of the

branches. as shown by lease audits taken at various times from 1920 to 1925. In the audits taken prior to the second half of 1924 it is almost impossible to make a direct comparison for similar periods between branches. However, the development within the individual branch is clearly shown.

In order to establish a basis for comparison, the audits of San Francisco, Los Angeles, Seattle, Portland and Tacoma, taken during 1920 and 1921, were grouped and this combined total gives us a fairly accurate picture of the condition of leases at the earliest period of record. In the first graph of the combined totals it will be seen that of a total of 7068 leases 2501 were Class "C" and "D" leases. In other words, 35-2/10% of all our leases were for a period of one year or "no lease." No record of contacts for this period was available since the present contact system had not been installed.

In the second graph has been shown the combined totals of the audits taken during 1922 and 1923 (San Diego and Fresno not included). In the time which elapsed between the first period and the second period 4700 leases were added, making a total of 11768 leases, of which 3538 were Class "C" and "D" leases, an increase of 1037 poor leases, the major portion of which was due to the acquisition of the Sacramento, Long Beach and Medford branches. Although the percentage of "C" and "D" leases to the whole decreased from 35-2/10% to 30%, undoubtedly there would have been a greater decrease if it had not been for the fact that 71-7/10% of all contacts that were necessary to be performed were delinquent.

All branches are included in the last graph, which is the combined total of the audits taken during the fiscal year 1924 and 1925. In the time which elapsed between the second and third (last) periods 7217 leases were added, making a total of 18985 leases, of which 3013 were "C" and "D" leases. In the face of this remarkable increase in the total volume of leases the actual number of poor leases was reduced from 3538 to 3013. The percent of "C" and "D" leases to the whole decreased from 30% to 15-8/10% and at the same time the per cent of delinquent contacts decreased from 71-7/10% to 9-8/10%

You will note that the Long Beach branch shows the lowest percentage of "C" and "D" leases, 12-4/10% of their leases being poor.

Experience has taught us that whenever consistent and intelligent contacts are performed there is always an improvement in the status of poor leases and the graphs clearly illustrate this fact, although the last audits of the Oakland and Seattle branches aparently show that this is not exactly true, these exceptions are readily explained as follows:

In the second half of the year 1924-1925 when the General Lease Department was taking an audit of leases, the Oakland branch acquired the posting plants in a number of towns operated by Retzloff, and few, if any, good leases were obtained, with the result that their "C" and "D" leases were abnormally increased at a time when it was entirely beyond their control to remedy the situation. As a matter of fact, their "C" and "D" leases would have shown a decrease over the previous audit, just as

(Testimony of Gilman B. Haynes)

their delinquent contacts did, if it had not been for this instance.

In the case of Seattle in the first half of 1924-1925 the graphs show a decrease in the percentage of "C" and "D" leases and an increase in delinquent contacts. However, the actual decrease in "C" and "D" leases took place almost immediately following the audit of the first half of 1922 and 1923 and was the result of intensive contact effort at that particular time and for this reason the last graph is not true to form.

This chart shows our rapid growth in leaseholds during the last five years. At present we have 2½ times more than we had in 1920 and our per cent of "C" and "D" leases has decreased from 35-2/10% to 15-8/10%, which shows that progress is being made in the right direction.

If the results obtained in the past year are an indication of what we may expect in the coming year, we see no reason why our poor leases should not be fewer in number than at any time in the history of our organization and feel you will agree with us that the proper performance of contacts and strict adherence to contact schedule will accomplish it.

Yours very truly,

FOSTER AND KLEISER COMPANY

G B Haynes.

G. B. Haynes,

Manager Lease Department

GBH:IM

(Testimony of Gilman B. Haynes)

(Graph)

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. AAA-10 in evid Filed 1/23 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: Chart No. 1 referred to in that bulletin is the graph attached to it. According to that bulletin, we had a total of 7,068 leases in all the branches for the years 1920 and 1921. The words "no lease" which are shown in quotation marks in the bulletin refer to the same kind of a lease that I have heretofore referred to as a Class D lease. I know that since 1915 Foster & Kleiser Company have from time to time acquired over 90 plants in the Pacific Coast area. It has been a part of my duty to set up a proper leasing system in each one of these acquired plants. Each of these plants which were so acquired had practically no system at all of keeping track of its leases. In that sentence in the bulletin, "71.7% of all contacts that were necessary to be performed were delinquent.", the word "contact" refers to interviewing lessors or property owners. The fiscal year of Foster & Kleiser Company starts April 1st of each year and runs for 12 months. Whenever the word "poor" is used in that bulletin in connection with leases, it means either a Class C or a Class D lease. The Retzloff plant referred to in that bulletin is located around Hayward, south of Oakland.

I am familiar with Foster & Kleiser's office bulletin No. 74; I wrote it. I don't recall now whether I had any conversation with my superiors about the writing of that bulletin before it was issued but I undoubtedly did have a conversation with either Mr. Lausen or Mr. Klei-

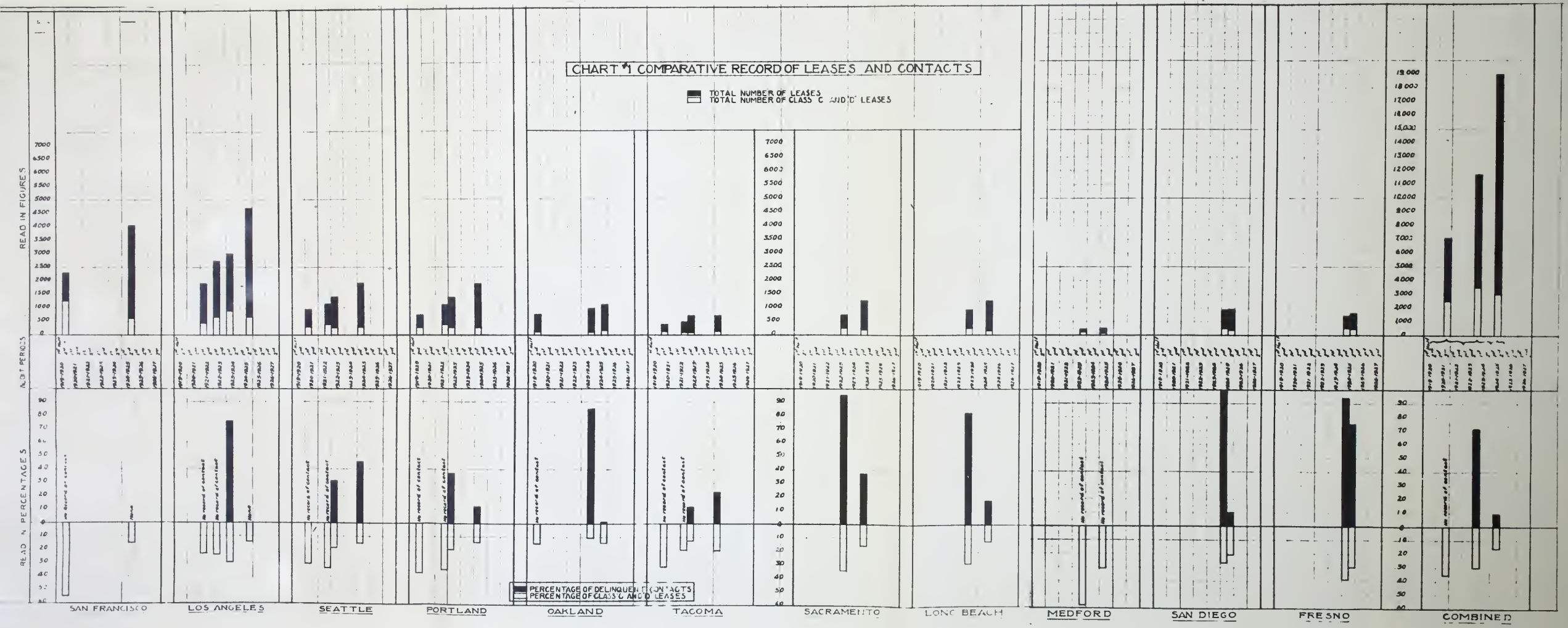
CHART #1 COMPARATIVE RECORD OF LEASES AND CONTACTS
TOTAL NUMBER OF LEASES
TOTAL NUMBER OF CLASS 'C' AND 'D' LEASES
READ IN FIGURES
AUDIT PERIODS
READ IN PERCENTAGES
PERCENTAGE OF DELINQUENT CONTACTS
PERCENTAGE OF CLASS 'C' AND 'D' LEASES
SAN FRANCISCO
LOS ANGELES
SEATTLE
PORTLAND
OAKLAND
TACOMA
SACRAMENTO
LONG BEACH
MEDFORD
SAN DIEGO
FRESNO
COMBINED

(Testimony of Gilman B. Haynes)

ser, or both of them. At the time I wrote that bulletin I had in mind the experience I had had with Ellert & Stevenson in San Francisco and the condition I had found in Los Angeles with respect to Erskine and LaFon, and the loss of locations. I have examined this bulletin, together with Mr. Clark. The purpose in issuing bulletin No. 74 was to have an inventory of competitive plants and to lay out a contact schedule of contacting these locations. The inventory requirements of the bulletin are contained in the first eight paragraphs of it.

The blue office record card and the blue field card were put into our lease record system pursuant to the instructions contained in Bulletin No. 74. The large blue card which you show me is the leasemen's card and the smaller one is the office record card. According to our system, the information to be recorded on all office record cards regardless of color is the location and description of the property, the owner's name and address and the agent, if any. If a contact was made the date would be put down. By contact I mean that if the leaseman saw the owner or agent of the property and had an interview with him, he made an entry on the field card first. The field card was the one that the field man carried around with him. The blue field men's cards were assigned to the leasemen. First they were updated in the system whenever they were supposed to come up for attention and they were then given to the lease manager and he assigned them to the various leasemen or delegated the job of assigning them to some subordinate. That applied to all field men's cards regardless of color. The leasemen would do whatever was necessary and make an entry on the card in long hand. He would then turn the card into the office

when he got through and it was up dated again. It would then be collected by the office record clerk and whatever the leaseman had written on the field card would be copied on the typewriter on the office record card. In other words, the office record card was an exact copy of the field card. The leasemen's field card is not a permanent record and it never has been a permanent record of the Foster & Kleiser Company. The office record card is a permanent record, with some exceptions. For example, the color of the office record cards on competitive locations was changed. When the color of the office record cards on competitive locations was changed back to buff, I directed the branches to transfer any information on the blue card that was of any importance at all to the buff office record card. If there was nothing of any importance on the blue card, they were just destroyed. As far as I know, these blue office record cards have all been destroyed. I haven't seen any for a long time.

Bulletin No. 74 provided for an inventory of competitive plants. That inventory was a list of information or data about the physical plant of the competitor of Foster & Kleiser Company. That inventory was sent to San Francisco on special sheets. In those days the sheet was called Sheet 9 which is provided for by Bulletin No. 74. Sheet 9 is substantially the same as Sheet 15. Sheet 9 did not contain a description of the competitor's property but Sheet 15 does. In all other respects the two sheets are the same. Bulletin 74 also provides for a system of contacts. The purpose of prescribing these contacts was to find out all we could about a competitive location, that is, a location that was occupied by a competitor's structure. The main purpose in getting information about a

(Testimony of Gilman B. Haynes)

competitor's location was because we wanted to know what the going rate of rentals was. It is very important to know how much rent your competitor is paying. You can't run your business correctly without knowing it. For example, supposing we have a lease on a piece of property for a period of five years at a rental of $20 a year and supposing that during the term of that lease competitors have come into the field, the appearance of the competitor would naturally make your rate of rental go up. It might have forced the rental on this particular property to go up to $40. If we wanted to renew our lease at the expiration of its term and went to see an owner and offered him $20, the amount we were originally paying, we would not get our renewal. The information concerning the rate of rental that a competitor was paying for his locations was intended to be available for the branches. As lease manager I did not control the rate of rental being paid by the branches, that is and has always been finally and lastly controlled by the branch manager. We also wanted information about competitor's locations because we wanted to know the size of his plant. That information was necessary from a sales angle. If a salesman is contacting a certain advertiser and attempting to sell him a certain contract and a competitor is also trying to get a contract from the same advertiser, the salesman naturally knows what the advertiser's needs are. If the advertiser, for example, is going to buy de luxe bulletins and the competitor does not have any, it is a mighty nice thing to know that the competitor won't get very far with that advertising because he has not got the service, and so our salesman wants to know exactly what the competitor has to offer. In the event of necessity, the salesman wants

to be able to compare Foster & Kleiser's goods with the goods of the competitor, and he wants to know what the competitor has to offer as against what Foster & Kleiser Company have to offer.

Another reason for promulgating this contact system was that we wanted to know what form of lease this competitor was using because in this business an owner will put us against a competitor; that is to say, he will tell us that the competitor offers him so much and try to force us up in our offer. We like to know and see a competitor's lease to see if the owner is actually getting what he says he is from the competitor. Another thing is that we like to know what amount of money the competitor is paying. I hardly know of a case where the competitors don't pay a whole lot more money than we do. That is the natural thing where a competitor enters into a town or community in which we are operating; it forces the rental up.

Another reason for laying out that schedule of contacts was that we wanted to know the term of a competitor's lease so that if we had need for the location, we would know the proper time when it would be terminated and we could make an offer. We also, in that connection, wanted to know the rental that the competitor had been paying or we couldn't make a sensible offer.

We have changed our form of leases from time to time and strengthened them. It was almost a continuous operation. I wrote this office bulletin No. 367 dated October 13, 1925 and sent it to all the branches. The bulletin referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-11 in evidence and read into the record. Said Defendants' Exhibit AAA-11 is in words and figures as follows, to-wit:

(Testimony of Gilman B. Haynes)

[Defendant's Exhibit No. AAA-11.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
#367

San Francisco, Calif., October 13, 1925

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: RE: LEASE FORM A-1

This bulletin cancels and replaces Office Bulletin #244 under date of July 8, 1924.

The A-1 lease form should be used in the leasing of all surface properties (including highways) when such properties are to be used for advertising purposes only, as this

lease can be terminated, only, by the erection of a permanent building.

The advantages of the A-1 form to the Foster and Kleiser Company are of major importance and since experience has proven that this type of lease is acceptable to property owners, this lease must be used to secure all surface and highway locations. (The use of lease forms B & C is to be discontinued and these forms will not be reprinted when the present stock is exhausted.)

When a location, which was leased on the old B form, was sold, any of the following things were apt to occur, the location was liable to be lost to competition or subjected to competitive bidding or the new owner might have arbitrarily demanded an unfair increase in rental. Locations secured on A-1 forms are practically immune from all the above disadvantages, since the new owner is bound to observe this agreement which was in effect prior to his ownership.

In short the A-1 form is an effective defensive weapon against competition and places us in an advantageous position to secure a renewal from the new owner at a fair and correct rental. It further tends to reduce the cost of securing renewals by giving us ample time to complete a satisfactory transaction without having to work under forced pressure, in order to quickly protect our investment.

(Testimony of Gilman B. Haynes)

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#367

Page 2 San Francisco, Calif., October 13, 1925

Notwithstanding the fact that an A-1 form is noncancellable in the event of sale, our policy will be to secure a renewal from the new owner. It is only natural that he will more willingly abide by an agreement to which he is a party and it is advisable from the standpoint of good will to secure a renewal.

The A-1 lease affords us the maximum protection unless we wish to go to the expense of securing a ground lease that is non-cancellable for any reason and results show that when the A-1 form is properly explained that property owners do not offer any serious objection to it, since after all there are practically only two things an owner can do with his property, sell or improve it, and there is nothing in this lease that prevents him from doing either. Unimproved property with an assured income, no matter how small, is certainly desirable from a prospective buyer's viewpoint and the fact that our structures, in practically all cases remain on the property after sale is proof enough that the revenue is a factor and the structures are acceptable.

(Testimony of Gilman B. Haynes)

POSITIVELY UNDER NO CIRCUMSTANCES SHOULD A FOR SALE CLAUSE OR THE WORDS "OR SOLD" BE INSERTED IN AN A-1 FORM LEASE. If in an EXCEPTIONAL CASE an owner will not sign a lease without a for sale clause and WE HAVE MADE EVERY EFFORT to obtain an unscratched lease, then attach the following clause to the form as a rider:

"In the event said property is sold, then the Lessor may terminate this lease by giving the Lessee written notice that such sale has been consummated, returning with such notice all rent paid for the unexpired term of this lease; thereupon the Lessee shall remove said signs and structures within thirty days after receipt of such notice."

The foregoing should be thoroughly explained to every leaseman with explicit instructions that the use of the rider is not to become general practice.

Kindly acknowledge the receipt of this bulletin.

Very truly yours,

FOSTER AND KLEISER COMPANY

G B Haynes

G. B. Haynes

GBH/EB General Lease Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. AAA-11 Filed 1/23 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Gilman B. Haynes)

Witness continuing: The unscratched lease referred to in that bulletin means a lease that is amended in handwriting. You can take a good A-1 form and amend it in such a way that it amounts to what we call a Class D lease or no lease.

The contact system provided for in Bulletin No. 74 graduates from a period of a 60-day contact to a 120-day contact depending upon the area, that is, whether it is on the outside, on the highway, or whether it is close in on heavily travelled streets of the city. Foster & Kleiser Company, as a matter of policy, was contacting the owners of locations which they had under lease also; that has been the system and practice throughout my time as lease manager after I got the system installed. We contacted our own lessors for the purpose of improving our position. I am familiar with the leasing policy of Foster & Kleiser Company with respect to so-called non-competitive properties as well as the policy with respect to competitive properties. I would say that there is no difference in the policy of Foster & Kleiser Company with respect to competitive and non-competitive properties. With respect to leases, that policy is to put under lease property that we have use for under the best terms and the lowest rate of rent possible, whether the property is competitive or non-competitive. It has never been the policy of Foster & Kleiser Company to lease property that it never had any use or need for. The policy of the company with respect to the time of leasing as compared with the time of needing property has been that we work in advance on leasing property to take care of our future needs. I have had experience with waiting

too long to get unbuilt space to meet the needs of the company. If you wait too long it costs you a lot more money, not only in rental but in the expense of securing the properties that we need. It has been my experience that if a competitor is not operating in a certain territory we are working in, we can contact an owner and take our time about it and we get our raw product which is the location at the lowest possible rental figure. The minute a competitor comes into the field, you have got to quicken up your activities and the more time that the competitor has and the longer you have competition, the higher your rental goes. It just keeps climbing and climbing. It has been the policy of Foster & Kleiser Company to lease properties that they deemed desirable for outdoor advertising p*ru*poses at a time when they could get them at reasonable figures or what they considered to be reasonable figures. As far as I know Foster & Kleiser Company has never leased any property that it never had any use for.

My purpose in writing that part of Bulletin No. 74 beginning with the sentence, "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not.", was to get the property ahead of them on the best deal we could because if we tied the property up sooner instead of waiting we would get the locations at a decent figure. I knew, of course, that if Foster & Kleiser Company got a piece of property under a good lease that was non-cancelable and couldn't be broken, that a competitor couldn't get it.

(Testimony of Gilman B. Haynes)

It was not my purpose to instruct the leasemen, of Foster & Kleiser Company, to take all competitors' locations, whether Foster & Kleiser Company needed them or not. The purpose that I had in mind when I wrote this bulletin was that even if we didn't have need for it right at that moment, that is the minute we got the property, we still wanted the property because we would have some future use for it. We might not need it for a month or maybe two months or six months or a year or two years. I was instructing them to lay up a reserve.

I know that a reserve of locations is necessary in the outdoor advertising business, at least in Foster & Kleiser's outdoor advertising business.

I subsequently wrote office bulletin No. 209 which modified bulletin No. 74. Bulletin No. 209 changed the competitive report and called it sheet 15 in place of sheet 9. Bulletin No. 209 also lessened the territory in which we were contacting competitive locations. Under Bulletin No. 74 we took in every place and in Bulletin No. 209 it limited the contacts on competitive locations to the tight district and the close-in highways. The close-in highways and the tight district is the area that carries the greatest circulation.

Bulletin No. 209 was thereupon received in evidence and marked Defendants' Exhibit AAA-12 in evidence and a portion thereof read into the record. Said Defendants' Exhibit AAA-12 is in words and figures as follows, to-wit:

[Defendant's Exhibit No. AAA-12.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 209

San Francisco, Cal.,
March 27th, 1924.

Foster and Kleiser Company,
San Francisco
Los Angeles
Seattle
Portland
Oakland
San Diego
Long Beach
Tacoma
Sacramento
Fresno
Medford

Gentlemen:– Re: Sheets #13, #14, and $15 of the new General Monthly Report.

New general monthly report sheets that are to be used in making up the Inventory of Space Rentals, Leases (Secured and Cancelled) Contact Record and Inventory

(Testimony of Gilman B. Haynes)

of Competitive Plants Reports will be forwarded to you by our Mr. Zamloch. Sample of same we have enclosed.

The Inventory of Space Rental Sheet No. 13 (formerly Sheet No. 8 as per our Office Bulletin No. 72) is the same as heretofore except the following:

All non-standard bulletin classifications are eliminated. Such footage, units, rental etc. of these classifications are now combined and carried as one with the standard figures of the same particular classification.

8 sheets and 16 sheets are eliminated. Such footage, units, rentals etc. of these classifications are now combined and carried as one with illuminated and unilluminated posting as the case may be.

Square footage is also eliminated in this report, therefore the total of units and square footage is struck out, although we do show the totals of all structures built including sold walls and all unbuilt space including open walls. All protection whether within your main plant or in outside towns is shown under the one heading "Protection".

Under the main caption, "Leaseholds for other than Cash Consideration" we have added "Cost This Month" and "Cost This Year". These figures can be secured from the Accounting Department as it is an easy matter to take the Space Rental Expense by the month by classification and deduct from that expense the portion that actually represents accrued rental, the difference naturally being the expense incurred for privilege work in that

(Testimony of Gilman B. Haynes)

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

classification for the month. By adding the monthly figures together the total expense to date this year can be accrued monthly. It is understood that figures inserted under this head and opposite each classification in the main plant (including secured unbuilt surface) also includes classifications in the outside towns. No figures under this heading will appear on your sheets below Sold Wall Classifications, except secured unbuilt surfaces in your main plant.

The Report of Leases (Cancelled and Secured) and Contact Record Sheet No. 14 (formerly part of Sheet No. 8 and your small contact report as per our office bulleting No. 147) is exactly the same as heretofore except that these two reports are now combined on the same sheet. Such branches that are not keeping at this time a record of contacts will not be in a position to fill in the lower half of this report. The next time a member of the General Lease Department visits your Branch he will install this record for you, if in the meantime it has not already been done.

The Inventory of Competitive Plants, Sheet No. 15, (formerly Sheet No. 9 as per our Office Bulletin No. 74)

is the same as heretofore except the following. Some of these changes have already been made by some of the Branches.

The caption "Last Year" is changed to read "Last Month. The figures under same will be as per your last month's inventory instead of the same month as of a year ago. Immediately following each district you should show a sub total of that district as to the number of locations and units as follows: –

Total Paint 20 X 10 and over
Total Sniping Posting
Total Three Sheet Posting
Total 24 Sheet Posting

A Grand Total is to be shown at the end of your report which will be the total of all districts i.e.

Grand Total–20 X 10 and over
Grand Total–Sniping Posting
Grand Total–Three Sheet Posting
Grand Total–24 Sheet Posting
GRAND TOTAL

All competitive structures, including sniping, are to be shown in this report except painted structures under 20 X 10 in size. Sixty day contact is to be made only, on locations that are within your tight district or on inner highways on which we carry our suburban structures.

(Testimony of Gilman B. Haynes)

Four copies of each of the foregoing reports are to be forwarded to the General Office as heretofore.

Very truly yours,

FOSTER AND KLEISER COMPANY

By G B. Haynes.

GBH/AH General Lease Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. AAA-12 Filed 1/23 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: The company subsequently issued another bulletin, No. 242, dated June, 1924. I have read that bulletin recently. That bulletin expressed the policy of Foster & Kleiser Company with respect to leasing at the time it was issued. The pages of the lease manual were dated September 1, 1924, and were sent out to the branches with a bulletin dated September 15, 1924. Prior to that time my instructions with reference to the operation of the leasing system and the policy of Foster & Kleiser Company with respect to leasing had been given verbally.

Whenever I made any changes in the lease manual the new pages were sent to the branches with an office bulletin which requested the branch to return the old pages to me with their acknowledgment. I thereupon destroyed the old pages so they were of no further use. I wanted to have the system uniform and to be sure that the branches had the latest information and that they did not retain any old information.

(Testimony of Gilman B. Haynes)

There was an office bulletin covering every change made in the lease manual to date. I have made a reconstruction of the changes made in the lease manual since the date of its original issuance and have reduced the record of the changes made and the sources where those changes can be found and the number of changes to a chart. I obtained the data from which I constructed this chart from office bulletins and general letters. The general letters which I mentioned were dated August 15, 1924, and the last one was dated April 3, 1933. The office bulletins which I used in the reconstruction of this manual are all listed right here on the left-hand side of the chart. (Photographic copies of the chart were thereupon handed to the court and jury.)

(Thereupon the witness proceeded to give testimony regarding the various changes in the manual).

THE COURT: Mr. Clark, is it your purpose to go through this process with reference to all these pages?

MR. CLARK: Only if I am driven to it. I hope to demonstrate that it can be done, and perhaps induce counsel to say it has been done.

With the permission of court and counsel, Mr. Glensor then interrogated the witness, who testified as follows:

Q Mr. Haynes, can you turn to any bulletin or any general office letter or any communication going out from your office to your branches, wherein it was said that the lease manual as originally constructed did not require your leasemen to lease all competitors' locations whether you had use or need for such locations or not?

A That information was never in the manual.

(Testimony of Gilman B. Haynes)

Q That is, it was never in the manual that they were to lease all such locations and it was never in there that they were not to?

A No, sir; there was nothing said. That phraseology was never used in the lease department manual.

Q All right. And can you point to any office bulletin or any other communication going out from the general office to your leasemen which said that you must move the competitors and keep them moving, or words to that effect, the same as is said in Bulletins 74 and 242? Was that ever in any lease manual?

A No, sir.

Q Was it ever in your lease manual that they were not to move the competitors as often as possible or keep them moving?

A It was never in the manual.

Q Was there ever any communication that went out from your office prior to Bulletin 550-A, which was issued in 1931 shortly following the James decree down here in Southern California, which cancelled and superseded Bulletins 74 and 242, 209 and some others?

A None to my knowledge that explicitly cancelled except what is mentioned in that bulletin.

BY MR. CLARK:

As lease manager and director of leasing, my purpose in issuing the lease manual was to put every policy of the company and everything that had anything whatsoever to do with leasing in one form. That manual was to supersede anything to the contrary of any kind. I tried to express that when I sent it out in Office Bulletin No. 268. The lease manual refers to all classes of locations, com-

petitive and no-competitive. Anything that was in Bulletins 74, 209 and 242 that I wanted, I included. There is certain wording in those bulletins that I certainly expressed very poorly and the language did not express my thoughts. Anything that was in those bulletins that did not express my thoughts, I did not include in the amendments. We specifically cancelled Bulletins 74 and 242 and others, including 209, by Bulletin No. 550-A in 1931 because when the Government investigators were in our office, those bulletins were called to my attention. The investigators were apparently interested in them and they interpreted them entirely different from what I meant them to mean. At that time I had forgotten about even writing those bulletins. Therefore, when we wrote Bulletin No. 550-A, which I wrote with the assistance of our attorneys, I suggested that we should expressly cancel them right then and there so that there would be no chance of anybody misinterpreting anything that was in them in the future; and that was done.

I have heard of certain accounts which have been called Account A in this case and elsewhere. I first heard of the activities represented in that bookkeeping account in the summer or early fall of 1926. I did not hear of any of those activities until that time and then I heard about them very indirectly. At that time I had sort of a grapevine message and heard certain remarks made about the De Luxe Advertising Company. If I remember correctly, I asked Mr. Young about it and Mr. Young just stated to me, "Well, that is just water over the dam. It is work that we did covering locations of the De Luxe Display Company." I was then out of the Los Angeles office be-

tween January, 1924 and the time in 1926 when I spoke to Mr. Young about it, but I never heard about any of those activities until 1926.

I have read this so-called statement of Clyde Meyer which is in evidence as Plaintiff's Exhibit 20-G. I did not know that those activities were resumed in the Los Angeles branch beginning in 1926. I first heard about them when I arrived in San Francisco from the north at one of the branches. Mr. Lausen stated to me that Mr. Musaphia had come up from Los Angeles with Mr. Young a day or two previously and that they had been doing some leasing work of a kind that they never should have done, contrary to the policy of the company. He told me that he gave Mr. Musaphia and Mr. Young positive orders to stop it. He then asked me where I was going and when I told him I was not going any place, he asked me if I would arrange my work so as to go to Los Angeles right away. He told me that he had given instructions to Mr. Musaphia and Mr. Young to go to our attorneys, Gibson, Dunn & Crutcher, and tell them exactly everything that they had done. He then said, "I want you to go down there and see that that is done." I came to Los Angeles very shortly after that, I don't remember exactly what date it was. I was present when that statement was made in Gibson, Dunn & Crutcher's office on September 28, 1927. I have no recollection one way or the other if I reported the result to Mr. Lausen or to any of my superiors. Naturally, when I went back to San Francisco, I told Mr. Lausen I had done as he told me to. It was Mr. Lausen's matter and he was handling it, and I had nothing to do with it except what he told me.

(Testimony of Gilman B. Haynes)

I know a man by the name of Walter Stevens, sometimes known as Wallie Stevens, who used to be a leaseman with Foster & Kleiser.

I first met Wallie Stevens in the Los Angeles branch in the middle of the year 1925. I had talked with Mr. O'Neil, the Seattle Branch Manager, regarding the replacement of the Lease Manager up there, to replace Mr. Macready, who was not of a Lease Manager type. I turned to Los Angeles for the new Lease Manager because that branch had about 50 or 60 leasemen and a man could be drawn from that organization without upsetting the organization. I did not know that Wallie Stevens had done any work with Clyde Meyer in the so-called undercover department when I was looking for a lease manager for Seattle. He was recommended by Mr. Musaphia and Mr. Young. I don't recall that I ever discussed his qualifications with Westbrook, or left to Westbrook the matter of selecting or recommending a lease manager for Seattle. Wallie Stevens went to Seattle about the middle of 1925. I did not give him any instructions about curbing competition with the Stevens Company in Seattle prior to his leaving. I undoubtedly informed him that we had a very active competitor up there. One of the reasons we wanted a new lease manager in Seattle was because we were confronted with competition for leases. Our competitor in Seattle was the C. E. Stevens Company.

The first time I went to Seattle after Wallie Stevens went up there was probably four or five months after he left. I think I had just one conversation with C. E. Stevens while I was there. I had never had more than one conference with him and that was at the Olympic Hotel where

(Testimony of Gilman B. Haynes)

I had lunch with Mr. C. E. Stevens and Mr. O'Neil, the Seattle Branch Manager. There were several locations in Seattle that we had under lease and Mr. Stevens also claimed some rights to the same locations. The conversation was opened by our submitting to Mr. Stevens our leases in evidence of our rights to those locations. I was under the impression that he was going to do likewise and that we were going to lay our cards on the table and decide who was entitled to the property and whoever had such, that was to be all there was to it. We asked him to submit his leases for inspection. Our leases were submitted to him and my recollection is that he inspected them. He did not submit his leases or any evidence of his rights to those locations. The substance of Mr. Stevens' conversation was that he wanted to make an arrangement with us about fighting for locations, that is, the fighting that was going on between the two of us for locations. He suggested some way of getting together whereby we would not fight with him for the locations in which he was interested and that he would not fight with us on those in which we were interested. I told him that it was just ridiculous, that he was a growing competitor and that we were growing too and that we were both going to have demand for lots of locations in the future and that such an arrangement just simply could not work. No agreement at all with respect to the rights that we each claimed in the locations was made. I recall that we told him that we would just have to submit the matters to our attorneys.

Q Let me ask you a question, Mr. Haynes, specifically: Did you say to Mr. Stevens at that time, "It is the policy of the company"—meaning Foster & Kleiser Company—

(Testimony of Gilman B. Haynes)

"We are going to take all of the locations, all the good locations of yours that we want. You can take all of ours that you can get"?

A No.

I did not say that or anything like it in substance nor did Mr. O'Neil say it. I was there all the time during luncheon. I arrived and left with Mr. O'Neil.

When competition for outdoor advertising locations comes into the field, the effect on the rate of rental paid for locations is that it forces the rental up. We have had a great deal of competition for locations during the time I have been lease manager. The worst places that we have had competition have been in Los Angeles, Seattle and Portland. We had some competition in Oakland with the Coast Advertising Company and also with the Special Site Sign Company, but in a minor way compared to others.

At one time I wrote monthly reports summarizing the activities and the results reached by my department and containing now and then a statement with respect to competition. I did that over a period of a couple of years from March, 1928 to April, 1930. These reports were intended for Mr. Kleiser, the president of the company. Here and there in the reports there is a quotation made of a report from some branch about competition. I received letters other than the written reports that went to the general office. After I received those letters I would take out of them anything that I thought would be of any possible interest to Mr. Kleiser and incorporate them in there and then I destroyed the letters.

It was vital to watch a situation into which a competitor was coming, Portland, for instance. When a competitor

comes in that is the time that we have got to put on pressure, trying to buy our raw materials at a decent figure, getting locations for built space and for reserve. We always got locations at a lower price before competition got in. After competition came in at any place, rentals were much higher.

With the consent of counsel for the defendant, Mr. Glensor thereupon examined the witness, who testified as follows:

BY MR. GLENSOR:

The extra tight district in San Francisco originally consisted of the triangle bounded by Post, Van Ness Avenue and Market Street. At the time of this report of August 1, 1928, it had been enlarged. According to my statement in the report, the district was nearly 100% tight. It was the nearest to 100% of any of our other branches except possibly Seattle, and the two seemed to be on a par. There were a lot of locations left in the extra tight districts in both cities. A district may be 100% tight and there may be 200 or 300 locations left in it. The expression 100% tight refers to the locations that were available at that time, that could be leased at rentals that we thought would be fair and that would be what we were willing to pay. There are a lot of locations in many districts which owners do not care to lease for advertising purposes; sometimes it will take a couple of years to sell them the idea. As stated in the report, the extra tight district in San Francisco was 100 per cent tight, in that between ourselves and our competitors we had all of the available locations under lease in that district at that time. All of the available ad-

(Testimony of Gilman B. Haynes)

vertising locations were gone. The expression "100 per cent tight" absolutely did not mean in any sense that our competitors were 100 per cent excluded from that district.

BY MR. CLARK:

The fact is that Foster & Kleiser Company ever since I have been with them have wanted all the good outdoor advertising locations that they could use. If getting these locations had the effect of excluding competitors from getting any outdoor advertising locations any place on the Pacific Coast area, the purpose of acquiring these locations was not to exclude competitors from getting any outdoor advertising locations. The purpose of getting them was because we needed them in the conduct of our business.

I do not say that the tight and extra tight districts were called by those names because Foster & Kleiser Company had them a hundred per cent. Certainly competitors have locations in the tight and extra tight districts. I have never seen the time when they did not.

I would judge that Foster & Kleiser had the greatest number of outdoor advertising leases in the entire Pacific Coast area in the calendar year 1929-30. At that time I would say that they had about 25,000 live leases up and down the Coast, from the Canadian line to Mexico. We no longer have that many leases. Foster & Kleiser Company, like everyone else, was affected by the depression. When the depression came along we got out of all the leases that we could possibly get out of that we had no use for. We began to "bail out". We started with unbuilt locations because that was the way to save revenue quickly. That saved revenue because our structures were not on the property and we did not have to move them. We also

got rid of a lot of leases on property on which we had built structures and we took down a lot of plant. When we concluded the process of bailing out, that left about 15,000 leases; so between the peak and when we had finished our bailing out process, it would be my estimate that we got rid of some 10,000 leases. We have now approximately 60 per cent in number of leases of what we had in our high period.

CROSS EXAMINATION

BY MR. GLENSOR:

When we started this bailing out process we had more leases than we had need for, due to the depression. We did not stop our contacts on competitive locations. From 1922 to 1929 our business was increasing and consequently our acquisition of leaseholds was increasing. There was a more or less steady uptrend in business and in the acquisition of leaseholds during all that time.

According to Bulletin No. 329 which was written in 1925, Foster & Kleiser Company had a total of 18,985 leases. We made a change in our system of leasing in 1929; I wouldn't call it a radical change.

I recall Bulletin No. 519 dated May 8, 1929, which is in evidence here as Exhibit 2-H, which changed the designation of the tight and extra tight districts to traffic areas and also eliminated the terms "extra dangerous", "dangerous", "vital", "hot", "extra hot", and so forth, substituting an alphabetical system of grading. I remember making that change; I wrote the bulletin. I can't recall what Mr. Kleiser said in expressing his wishes to me about making those changes. The bulletin starts off, "at Mr.

(Testimony of Gilman B. Haynes)

Kleiser's request" so evidently I talked to him about it but I don't recall what he said.

I recall Office Bulletin No. 522 which is signed by Mr. Kleiser. I don't recall all the details of it.

Notwithstanding the language used in Bulletin No. 74 in 1922 and Bulletin No. 242 in 1924, it was never the policy of Foster & Kleiser Company to try and take competitors' sites just for the purpose of moving them off their locations. If we needed them, we took them. If we did not need the site, we did not try to get it. That has been our policy from 1922 right down to 1929 and that is what those bulletins properly interpreted and understood mean.

I don't see any difference between the policy expressed in Bulletin No. 522 and the policy of the company previous to that bulletin.

We issued Bulletin No. 524 on June 19, 1929 which made numerous changes in the lease department manual. The new pages of the lease department manual replaced all previous sheets which had related to competitive leasing with the exception of pages 67 and 68 and the two new pages issued with that bulletin, 82 and 83. A good many other pages of the manual not relating to competition were also changed by new pages sent out with that bulletin. Bulletin No. 524 also directed the rewriting of the field cards and office record cards relating to competition and the destruction of some of them. I estimated that we had about 100,000 field cards and office record cards. I couldn't say exactly how many of those were blue cards relating to competitive leasing. The difference after the cards were rewritten was that some of the spaces in the form were

(Testimony of Gilman B. Haynes)

changed and the new cards were buff instead of blue. Buff is the same color that we always had.

Q Was there any particular reason or occasion for these numerous changes which I have just gone over with you, of your leasing policy with respect to competition, in the spring of 1929?

A There was no change in our policy.

Q When did you first personally hear of the activity which finally resulted in the Government investigation of your Company to which you adverted yesterday?

MR. CLARK: That question assumes something that is not in evidence and I object to it on that ground.

THE COURT: Well, the witness testified, did he not, to some such investigation?

MR. GLENSOR: Yes, sir.

MR. CLARK: Well, that was not the question. The question was "When did you first hear of the activity which resulted in the Government investigation?". Now, what activity is counsel talking about?

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 228.

Q When did you first hear of this proposed Government investigation; that there might be one or that there was going to be one?

A Well, I believe that was in 1930, sometime.